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Registration of Municipal Advisors; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240 and 249

[Release No. 34–70462; File No. S7–45–10]

RIN 3235–AK86

Registration of Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Final 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 (''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, Exchange Act Rule 15Ba2–6T, and form, Form MA–T, effective October 1, 2010. To enable municipal advisors to continue to register under the temporary registration regime until the applicable compliance date for permanent registration, the Commission is extending Rule 15Ba2–6T, in a separate release, to December 31, 2014. The Commission is today adopting new Rules 15Ba1–1 through 15Ba1–8, new Rule 15Bc4–1, and new Forms MA, MA–I, MA–W, and MA–NR under the Exchange Act. These rules and forms are designed to give effect to provisions of Title IX of the Dodd-Frank Act that, among other things, require the Commission to establish a registration regime for municipal advisors and impose certain record-keeping requirements on such advisors.

DATES: *Effective Date:* January 13, 2014, except that amendatory instruction 11 removing § 249.1300T is effective January 1, 2015.

Compliance Date: The applicable compliance dates are discussed in the section of the release titled ''V. Implementation and Compliance Dates''.

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SUPPLEMENTARY INFORMATION: The Commission is adopting Rules 15Ba1–1 to 15Ba1–8 (17 CFR 240.15Ba1–1 to 240.15Ba1–8) and 15Bc4–1 (17 CFR 240.15Bc4–1) under the Exchange Act; Forms MA, MA–I, MA–W, and MA–NR (17 CFR 249.1300, 1310, 1320, and 1330); and Rules 30–3a (17 CFR 200.30–3a) and 19d (17 CFR 200.19d) under the Commission's Rules of Organization and Program Management. The Commission is amending Rules 30–18 (17 CFR 200.30–18) and 19c (17 CFR 200.19c) under the Commission's Rules of Organization and Program Management.

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I. Executive Summary

Section 975 of the Dodd-Frank Act creates a new class of regulated persons, ''municipal advisors,'' and requires these advisors to register with the Commission. This new registration requirement, which became effective on

October 1, 2010, makes it unlawful for any municipal advisor to provide certain advice to or on behalf of, or to solicit, municipal entities or certain other persons without registering with the Commission.[1] A person is deemed under the Exchange Act to have a statutory fiduciary duty to any municipal entity for whom such person acts as a municipal advisor.

The new registration requirements and regulatory standards are intended to mitigate some of the problems observed with the conduct of some municipal advisors, including ''pay to play'' practices, undisclosed conflicts of interest, advice rendered by financial advisors without adequate training or qualifications, and failure to place the duty of loyalty to their clients ahead of their own interests.[2] According to a Senate Report related to the Dodd-Frank Act, ''[t]he $3 trillion municipal securities market is subject to less supervision than corporate securities markets, and market participants generally have less information upon which to base investment decisions. During the [financial] crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries.'' [3] Accordingly, in response to the financial crisis that began in 2008, the Dodd-Frank Act amended the Exchange Act to require ''a range of municipal financial advisors to register with the [Commission] and comply with regulations issued by the [MSRB].'' [4]

In September 2010, the Commission adopted, and subsequently extended, an interim final temporary rule establishing a temporary means for municipal advisors to satisfy the registration requirement.[5] As of March 31, 2013, there were approximately 1,130 Form MA–T registrants, including approximately 330 registrants that are also registered investment advisers and/or broker-dealers. In December 2010, the Commission proposed a permanent registration regime to govern municipal advisor registration (''Proposal'').[6] The Commission has considered comments received in connection with both the 2010 interim final temporary rules, as well as the Proposal, and is today establishing a permanent registration regime for municipal advisors and imposing certain record-keeping requirements on such advisors. Further, the Commission today, in a separate release, is extending the expiration date of the temporary registration regime to December 31, 2014.[7] This extension will enable municipal advisors that are required to register with the Commission on or after the Effective Date but before the applicable compliance date to continue to register under the temporary registration regime.

The statutory definition of a ''municipal advisor'' is broad and includes persons that may not have been considered to be municipal financial advisors prior to the enactment of the Dodd-Frank Act. Historically, municipal advisors have been largely unregulated.[8] The Commission believes that the information disclosed pursuant to the rules and forms established by the permanent registration regime for municipal advisors will enhance the Commission's oversight of municipal advisors and their activities in the municipal securities markets. The publicly-available online information provided pursuant to these rules and forms should also aid municipal entities and obligated persons in choosing municipal advisors and help provide greater transparency when engaging in transactions or investments with municipal advisors.

The Exchange Act defines the term ''municipal advisor'' to mean a person (who is not a municipal entity or an employee of a municipal entity) that: (1) 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, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (2) undertakes a solicitation of a municipal entity.[9] The definition of municipal advisor includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors that provide municipal advisory services, unless they are statutorily excluded.[10]

The statutory definition of ''municipal advisor'' explicitly excludes: (1) A broker, dealer, or municipal securities dealer serving as an underwriter (as defined in Section 2(a)(11) of the Securities Act of 1933); (2) any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice; (3) 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; (4) attorneys offering legal advice or providing services of a traditional legal nature; and (5) engineers providing engineering advice.[11]

The Exchange Act defines the term ''municipal financial product'' to mean municipal derivatives, guaranteed investment contracts, and investment strategies.[12] ''Investment strategies'' is defined to include plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.[13]

The Proposal reflected the Commission's preliminary interpretation of the new statutory requirements, based on its understanding at that time of Congressional objectives and intent in adopting Section 975 of the Dodd-Frank Act. The Commission requested comment generally on the Proposal and also requested comment on over 175 specific issues. The Commission received over 1,000 comment letters on the Proposal, representing a wide range of viewpoints, which are discussed throughout this release. Commenters included municipal advisors, municipal entities, broker-dealers, banks, accountants, lawyers, engineers, registered investment advisers, organizations representing industry participants, investors, the Municipal Securities Rulemaking Board, members of Congress, and others.

Commenters generally supported the goals of the Proposal, although many expressed concerns about its breadth and recommended that the Proposal be amended or clarified in certain respects. Major themes in the comments included: (1) Concerns about the proposed treatment of appointed board members and other public officials of municipal entities as advisors; (2)

[1] *See* 15 U.S.C. 78*o*–4(a)(1)(B).

[2] *See, e.g.,* Municipal Securities Rulemaking Board, Unregulated Municipal Market Participants—A Case for Reform, April 2009, *http://www.msrb.org/News-and-Events/Press-Releases/Press-Releases/~/media/Files/Special-Publications/MSRBReportonUnregulatedMarketParticipants_April09.ashx* (''MSRB Study'').

[3] *See* S. Rep. No. 111–176, at 38 (2010).

[4] *See id.*

[5] *See* Section II.C. below and Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) (''Temporary Registration Rule Release'').

[6] *See* Section II.D. below and Securities Exchange Act Release No. 63576 (December 20, 2010), 76 FR 824 (January 6, 2011) (''Proposal'').

[7] *See* Rule 15Ba2–6T and Securities Exchange Act Release No. 70468 (September 23, 2013) (''Form MA–T Extension Release'').

[8] *See, e.g.,* MSRB Study, *supra* note 2.

[9] *See* 15 U.S.C. 78*o*–4(e)(4)(A).

[10] *See* 15 U.S.C. 78*o*–4(e)(4)(B).

[11] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[12] *See* 15 U.S.C. 78*o*–4(e)(5).

[13] *See* 15 U.S.C. 78*o*–4(e)(3).

concerns about the proposed application to advice on investments of all municipal funds (versus investments associated with proceeds of municipal securities); and (3) potential effects on securities activities of banks for which there are no statutory exclusions from the definition of ''municipal advisor.'' The Commission staff discussed many issues with other U.S. financial regulators, commenters, and interested market participants in devising a final rule that requires registration of parties engaging in municipal advisory activities without unnecessarily imposing additional regulation.

One theme reflected in the statutory exclusions to the definition of a municipal advisor and in the Commission's consideration of additional regulatory exemptions involves an approach that focuses and limits the scope of these exclusions and exemptions based on identified activities (''activities-based exemptions'') rather than on the basis of the status of particular categories of market participants (''status-based exemptions''). This approach aims to ensure that exemptions apply in targeted circumstances to appropriate identified activities. By comparison, a concern with status-based exemptions is that they could provide inappropriate competitive advantages to covered categories of market participants.[14]

In consideration of the views expressed, suggestions for alternatives, and other information provided by commenters, the Commission is adopting the rules with significant modifications from the Proposal to narrow the scope of the registration requirement, including through certain activity-based exemptions from the definition of municipal advisor, and to provide additional guidance to market participants about what constitutes municipal advice and who is required to register as a municipal advisor. Some of the more significant changes made in this adopting release are summarized as follows.

Broad Exemption for Public Officials and Employees of Municipal Entities and Obligated Persons

The Exchange Act excludes municipal entities and employees of municipal entities from the definition of municipal advisor.[15] The Proposal did not extend the exclusion for ''employees of a municipal entity'' to include appointed officials. The Commission received approximately 670 comment letters to the effect that the proposed exclusion for employees of municipal entities was unduly narrow and that it failed to provide sufficient coverage for appointed board members and other public officials associated with municipal entities. The final rule provides a broad exemption from municipal advisor registration for all employees, governing body members, and other officials of municipal entities and obligated persons, to the extent that they act within the scope of their employment or official capacity.[16] The Commission does not expect that the ordinary performance of the duties of an appointed member of a governing body of a municipal entity—such as voting, providing a statement or discussion of views, or asking questions at a public meeting—would cause that individual to be a municipal advisor with respect to the municipal entity on whose board he or she serves.

Limitation to Investments Related to Proceeds of Municipal Securities Instead of All Public Funds

The Exchange Act 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'' (emphasis added).[17] In the Proposal, the Commission proposed to interpret the ''investment strategies'' definition broadly to cover not only the statutorily-identified matters but also plans, programs, or pools of assets that invest any funds held by or on behalf of a municipal entity.

The Commission received approximately 60 comment letters to the effect that the Proposal interpreted the ''investment strategies'' definition too broadly to cover advice to municipal entities regarding plans or programs for the investment of all public funds of municipal entities (rather than investments more narrowly associated with proceeds of municipal securities and the recommendation of and brokerage of municipal escrow arrangements). The Commission has determined to adopt the statutory definition of ''investment strategies,'' but is also adopting an exemption for certain persons that will result in a narrower application of ''investment strategies'' than originally proposed, limiting such strategies to matters relating to the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments, in lieu of all public funds of municipal entities.[18] This more circumscribed approach to ''investment strategies'' has a narrowing effect throughout the municipal advisor registration regime (*e.g.,* many investment advisers and a significant portion of the bank activities identified by commenters will not be subject to municipal advisor registration).

New Tailored Exemption for Banks

The Exchange Act does not exclude banks from the definition of municipal advisor. The Commission received approximately 300 comment letters to the effect that the Proposal did not provide needed exemptions for so-called ''traditional banking'' activities. Most of these comments regarding the impact on banks related to the proposed broad interpretation of the ''investment strategies'' definition. Many commercial banks and banking associations asserted that the Commission's interpretation of ''investment strategies'' was overly broad and would potentially cover traditional banking products and services, such as deposit accounts, cash management products, and loans to municipalities. As a result, according to commenters, banks or bank employees that provide advice regarding such products and services could be considered municipal advisors, adding ''a new layer of regulation on bank products for no meaningful public purpose.''[19]

The narrowing of the application of ''investment strategies'' in the final rule is designed to address the main concerns raised by these commenters.[20] In addition, the final rule provides a new tailored exemption from the definition of municipal advisor for a bank providing advice with respect to the following: (1) Any investments that are held in a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank; (2) any extension of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account; (3) any funds held in a sweep account; or (4) any investment made by a bank acting in the capacity of an indenture trustee

[14] *See infra* Sections VIII.D.5.b. (discussing alternatives to the exclusions from the definition of municipal advisor) and VIII.D.6.b. (discussing alternatives to the exemptions from the definition of municipal advisor).

[15] *See* 15 U.S.C. 78*o*–4(e)(4)(A).

[16] *See infra* Section III.A.1.c.i.

[17] *See* 15 U.S.C. 78*o*–4(e)(3).

[18] *See infra* Section III.A.1.b.viii.

[19] *See infra* note 876 and accompanying text (discussing comments regarding an exemption for banks from the municipal advisor registration rules).

[20] *See infra* Section III.A.1.c.viii.

or similar capacity (*e.g.,* a bond indenture trustee, paying agent, or municipal escrow agent).

The final rule preserves the municipal advisor registration requirement for banks that engage in municipal advisory activities, such as banks that act as financial advisors to municipal entities in structuring issues of municipal securities. Also, the final rule preserves the municipal advisor registration requirement for banks that provide advice with respect to municipal derivatives.

Advice Standard in General

For purposes of the municipal advisor definition, the Dodd-Frank Act did not specifically define or otherwise provide a general standard to determine what constitutes ''advice'' to a municipal entity or obligated person. The Commission received comments requesting clarification of ''advice'' and suggesting general parameters for defining advice that distinguish between providing general information to a municipal entity and recommending a specific action to a municipal entity. While the Commission believes that the determination of whether a person provides advice to or on behalf of a municipal entity or obligated person depends on all the relevant facts and circumstances, the Commission also believes that additional guidance on the advice standard for purposes of the municipal advisor definition will provide greater clarity regarding the applicability of the municipal advisor registration requirement. Accordingly, the adopted rules provide that advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities (including with respect to the structure, timing, terms and other similar matters concerning such financial products or issues).[21]

Exemption for Certain Swap Dealers

The Exchange Act does not exclude swap dealers from the definition of municipal advisor. The Commission received comments suggesting that regulation of swap dealers under the municipal advisor registration regime should be coordinated with other regulatory programs. The Commission recognizes that swap dealers are also subject to the provisions of Title VII of the Dodd-Frank Act,[22] which provide the Commodity Futures Trading Commission (''CFTC'') with authority to register and implement business conduct standards for swap dealers with respect to their interactions with municipal entities and obligated persons that are ''special entities,'' as discussed further below in Section III.A.1.c.vi. The final rules exempt any registered swap dealer to the extent that such dealer recommends a municipal derivative or a trading strategy that involves a municipal derivative, so long as such dealer or associated person is not ''acting as an advisor'' to the municipal entity or obligated person, applying the standards applicable to the parties to such transactions under the existing regulatory regime of the CFTC.[23]

Exemption When There Is an Independent Registered Municipal Advisor

Several commenters suggested that a person providing advice with respect to municipal financial products or the issuance of municipal securities should not be regulated as a municipal advisor if the municipal entity or obligated person is otherwise represented by a municipal advisor. The Commission believes that if a municipal entity or obligated person is represented by a registered municipal advisor, parties to the municipal securities transaction and others who are not registered municipal advisors should be able to provide advice to such municipal entity or obligated person, so long as the responsibilities of each of the parties are clear.

Accordingly, the final rules exempt persons providing advice with respect to municipal financial products or the issuance of municipal securities from the definition of municipal advisor so long as: (1) An independent registered municipal advisor is providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities, is registered pursuant to Section 15B of the Exchange Act and the rules and regulations thereunder, and is not, and within at least the past two years was not, associated with the person seeking to rely on this exemption; (2) such person receives from the municipal entity or obligated person a representation in writing that it is represented by, and will rely on the advice of, an independent registered municipal advisor; and (3) such person provides written disclosure to the municipal entity or obligated person that such person is not a municipal advisor and, with respect to a municipal entity, is not subject to the statutory fiduciary duty applicable to municipal advisors under the Exchange Act, and such person provides a copy of such disclosure to the municipal entity's or the obligated person's independent registered municipal advisor.[24]

Exclusion of Individuals From Registration

In the Proposal, the Commission proposed to require registration of all individuals associated with municipal advisory firms who engage in municipal advisory activities, as contrasted with limiting registration to the municipal advisory firms themselves. For reasons further discussed in Sections III.A.2.a. and III.A.3. of this adopting release, the Commission is limiting the registration requirement to municipal advisory firms and sole proprietors.

II. Introduction

A. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[25] 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.[26] With Section 975 of Title IX of the Dodd-Frank Act, Congress amended Section 15B of the Exchange Act[27] to, among other things, make it unlawful for municipal advisors[28] to provide certain advice to, or solicit, municipal entities[29] or certain other persons without registering with the Commission.[30]

[21] *See infra* Section III.A.1.b.i.

[22] *See* Dodd-Frank Act sections 731 *et seq.,* 764 *et seq.*

[23] *See infra* Section III.A.1.c.vi. The Commission also received similar comments regarding security-based swap dealers. As discussed herein, although the Commission is not providing an exemption in the rules as adopted for security-based swap dealers, security-based swap dealers may be eligible for exemption pursuant to another exemption, such as when there is a separate registered municipal advisor, and the Commission may in the future consider whether to provide a comparable exemption by rule. *See id.*

[24] *See infra* Section III.A.1.c.iii.

[25] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[26] *See* Public Law 111–203 Preamble.

[27] 15 U.S.C. 78*o*–4.

[28] *See infra* Section III.A.1. (discussing the term ''municipal advisor'').

[29] *See infra* Section III.A.1.b.ii. (discussing the term ''municipal entity'').

[30] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

1. Overview of Municipal Securities Market

a. Municipal Advisors

As discussed in the Proposal,[31] 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 and in the Proposal,[32] 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 specifically to these entities' municipal advisory activities.

Municipal advisors, commonly referred to as ''financial advisors,'' [33] engage in municipal advisory activities in a variety of contexts. With respect to the issuance of municipal securities, municipal advisors (which may include entities registered as brokers, dealers, municipal securities dealers, or investment advisers acting as municipal advisors), among other things, may assist municipal entities in developing a financing plan, assist municipal entities in evaluating different financing options and structures, assist in the selection of other parties to the financing (such as bond counsel and underwriters), coordinate the rating process, ensure adequate disclosure, and/or evaluate and negotiate the financing terms.[34] According to the Municipal Securities Rulemaking Board (''MSRB''), approximately $315 billion (70%) [35] of the municipal debt issued in 2008 was issued with the participation of municipal advisors.[36] The MSRB also stated that participation by municipal advisory firms in the issuance of municipal securities is rising, noting a 63% participation rate in 2006, a 66% participation rate in 2007, and a 70% participation rate in 2008.[37] A study that looked at historical involvement by ''financial advisors'' identified participation rates of approximately 50% in the period from 1984 to 2002.[38]

As discussed in the Proposal,[39] municipal advisors may also engage in municipal advisory activities with respect to municipal financial products.[40] For example, as derivatives—which are municipal financial products—developed in the municipal securities market, some municipal advisory firms began marketing themselves as experts in derivatives. These municipal advisory firms are generally referred to as ''swap advisors.'' [41] Swap advisors may provide advice solely with respect to a municipal derivative transaction or may provide advice in other types of municipal advisory capacities.

Further, municipal advisors may provide advice to municipal entities concerning guaranteed investment contracts and investment strategies.[42] These advisory firms may assist in the investment of proceeds from bond offerings as well as manage other public monies. Such public monies include general and special funds of state and local governments, public pension plans, and other funds dedicated to public programs, such as public transportation, police and fire protection, public health, and public education. In addition, municipal advisors may help state and local governments find and evaluate other advisors that manage public funds and provide other types of services.[43]

Other persons that may be required to register as municipal advisors include those who solicit municipal entities on behalf of brokers, dealers, municipal securities dealers, municipal advisors, and investment advisers. Such solicitation activities are discussed herein.[44]

b. Municipal Entities and Municipal Financial Products

The municipal securities market consists of approximately 44,000 issuers,[45] a diverse group that includes states, their political subdivisions (such as cities, towns, counties, and school districts), and their instrumentalities, authorities, agencies, and special districts. These public bodies are governed by state and local laws, including state constitutions, statutes, city charters, and municipal codes.[46] Such constitutions, statutes, charters, and codes impose on municipal issuers requirements relating to governance, budgeting, accounting, and other financial matters.[47] The governing bodies of municipal issuers are as varied as the types of issuers, ranging from state governments, cities, towns, counties, and school districts, to authorities, agencies, and other special districts.[48]

Municipal securities are issued by government entities to pay for a variety of public projects, to obtain cash flow for other governmental needs, and to provide tax-exempt or taxable financing for non-governmental private projects by acting as a conduit on behalf of private organizations.[49] In 2011, there were over one million different municipal bonds outstanding, totaling $3.7 trillion in principal.[50] Also, there were 13,463 municipal issuances, totaling $355 billion of principal.[51] Further, in 2011, the average daily trading volume for the municipal bond market was $11.3 billion.[52]

Interests offered by college savings plans (''529 Savings Plans'') that comply with Section 529 of the Internal Revenue Code [53] are another type of

[31] *See* Proposal, 76 FR 825.

[32] *See id.*

[33] *See infra* note 36 (referring to municipal advisors as ''financial advisors'').

[34] *See* Jayaraman Vijayakumar 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.

[35] *See* MSRB Study, *supra* note 2, at 1.

[36] *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. *See id.,* at 2.

[37] *See id.,* at 2.

[38] *See* Arthur Allen and Donna Dudney, May 2010, *Does the Quality of Financial Advice Affect Prices?* The Financial Review 45: 389 (''Allen and Dudney'').

[39] *See* Proposal, 76 FR 825.

[40] *See infra* Section III.A.1.b.iv. (discussing the term ''municipal financial products'').

[41] *See* MSRB Study, *supra* note 35.

[42] *See infra* Sections III.A.1.b.vi. and III.A.1.b.viii. (discussing the terms ''guaranteed investment contracts'' and ''investment strategies,'' respectively).

[43] *See* Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018, 41019 (July 14, 2010) (''Political Contributions Final Rule'').

[44] *See infra* Section III.A.1.b.x.

[45] *See* Commission Report on the Municipal Securities Market, 1 (July 31, 2012), available at *http://sec.gov/news/studies/2012/munireport073112.pdf* (''2012 Report on the Municipal Securities Market'').

[46] *See* American Bar Association, Disclosure Roles of Counsel in State and Local Government Securities Offerings 1 (Third Edition, 2009) (''Disclosure Roles of Bond Counsel'').

[47] *See id.,* at 2.

[48] *See id.,* at 78.

[49] 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.

[50] *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 5. In 2011, there were fewer than 50,000 different corporate bonds, totaling $11.5 trillion in principal (this figure includes foreign bonds). *See id.* There were also $22.5 trillion of corporate equities outstanding. *See id.*

[51] *See id.,* at 6.

[52] *See id.,* at 21. Compare this to the corporate bond market, which in 2011 had an average daily trading volume of $20.6 billion. *See id.*

[53] *See* 26 U.S.C. 529.

municipal security. 529 Savings Plans involve offerings of interests in state tuition programs and qualified savings plans that are public instrumentalities of the particular state, and provide tax advantages designed to encourage saving for future college costs.[54] 529 Savings Plan assets have increased from approximately $9 billion in 2000 to approximately $190 billion in 2012, and the number of 529 Savings Plan accounts has increased from approximately 1.3 million in 2000 to approximately 11 million in 2012.[55]

A person that sells interests in 529 Savings Plans generally must be registered as a broker, dealer, or municipal securities dealer and comply with applicable MSRB rules.[56] 529 Savings Plans are also relevant in the context of municipal advisor regulation, because an issuance of interests in 529 Savings Plans is an issuance of municipal securities.[57] Further, 529 Savings Plans may engage in transactions involving municipal financial products and may also seek advice in connection with such products or issuances.[58] Moreover, third parties seeking to advise 529 Savings Plans may solicit such plans for that purpose.[59]

Public pension plans may also engage in transactions in municipal financial products and seek advice in connection with such transactions. Third parties may solicit these public pension plans on behalf of firms seeking to provide advice to these plans.[60] According to the 2011 Census Bureau survey, there were 3,418 state- and locally-administered pension systems in 2011.[61] As of the first quarter of 2013, public pension plans had over $3 trillion of assets and represented approximately 30 percent of all U.S. pension assets.[62]

In addition to public pension plans and 529 Savings Plans, state and local government agencies also maintain other pools of assets, including general funds and other special funds. Governmental entities generally invest such funds in a combination of individualized investments, investment agreements, and local government investment pools (''LGIPs'').[63]

Historically, the over-the-counter derivatives markets have been relatively opaque because of their privately negotiated, bilateral nature and the limited availability of transaction data such as prices and volumes.[64] Accordingly, there is currently no comprehensive data on how many municipal issuers are active in the $162 trillion interest-rate swap market,[65] although reported estimates of the size of the municipal derivatives market range from $100 billion to $300 billion annually in notional principal amount.[66] Further, estimates of the number of municipal issuers that have engaged in derivative transactions also vary. Some anecdotal evidence suggests a relatively wide use of municipal derivatives in recent years. For instance, a 2008 review of Pennsylvania Department of Community and Economic Development records indicated that 185 school districts, towns, and counties in Pennsylvania have entered into derivative transactions since 2003, when the state's law was explicitly changed to allow for such transactions.[67] Other estimates, however, have pointed to a less widespread use of derivatives among municipal issuers. For example, a 2007 study by Standard & Poor's identified 750 municipal issuers that engaged in interest rate swaps.[68] In addition, in October 2009, Moody's undertook a review of the state and local governments for which Moody's provides ratings and identified 500 entities with outstanding interest rate swaps.[69] Moody's also estimated that Pennsylvania issuers accounted for 22% of all municipal derivative transactions, suggesting that a broad participation in derivative transactions by municipal entities in Pennsylvania did not necessarily translate into a broad participation by municipal entities nationwide.[70] Since 2008, the use of derivatives by municipal entities has declined, and many municipal entities have terminated existing interest rate swaps.[71]

2. Historical Regulation of Municipal Securities and Municipal Advisors

a. Municipal Securities Market

As discussed in the Proposal,[72] the Securities Act of 1933 (''Securities

[54] *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 8.

[55] *See* College Savings Plans Network 529 Report (March 2013), available at *http://www.collegesavings.org/includes/pdfs/March%202013%20529%20Report%20Final.pdf* and Investment Company Institute, 529 Plan Program Statistics, Fourth Quarter 2012, available at *http://www.ici.org/research/stats/529s/529s_12_q4.*

[56] *See, e.g.,* MSRB Notice 2002–19 (May 14, 2002) (Application of Fair Practice and Advertising Rules to Municipal Fund Securities).

[57] *See* MSRB, 529 Plan Basics, available at *http://emma.msrb.org/EducationCenter/FAQs.aspx?topic=PlanBasics* and MSRB, Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market (January 18, 2001), available at *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Definitional/Rule-D-12.aspx?tab=2#_4B905EF1-5F85-4D2E-B27C-6B94EF405F47* (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).

[58] *See* Political Contributions Final Rule, *supra* note 43, at 41044–46.

[59] *See id.,* at 41019.

[60] *See id.*

[61] *See* U.S. Census Bureau, *Annual Survey of Public Pensions: State- and Locally-Administered Defined Benefit Data Summary Report: 2011* (August 2013), available at *http://www2.census.gov/govs/retire/2011summaryreport.pdf.*

[62] *See* Federal Reserve Board, *Financial Accounts of the United States—Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts,* Table L.117 (First Quarter 2013), available at *http://www.federalreserve.gov/releases/z1/current/z1.pdf.*

[63] According to a 2009 article, 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. As of the first quarter of 2013, state and local governments had approximately $2.1 trillion dollars in total financial assets. *See* Federal Reserve Board, *Financial Accounts of the United States—Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts,* Table L.104 (First Quarter 2013), available at *http://www.federalreserve.gov/releases/z1/current/z1.pdf.*

[64] The Dodd-Frank Act, however, will require more public reporting of derivative transactions in the future. For example, the CFTC has adopted rules to implement a framework for the real-time public reporting of swap transactions and pricing data for swap transactions. *See* 77 FR 1182 (January 9, 2012). Moreover, the Dodd-Frank Act requires the Commission to adopt, and the Commission has proposed, rules to provide for the reporting of security-based swaps information to registered security-based swap data repositories or to the Commission and the public dissemination of security-based swap transaction, volume, and pricing information. *See* Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75208 (December 2, 2010).

[65] *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 91.

[66] *See* MSRB Study, *supra* note 35, at 10.

[67] *See* Martin Z. Braun, *Deutsche Bank Swap Lures County as Budgets Crumble,* Bloomberg (Nov. 26, 2008), available at *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aUYLG7W1nGpM.*

[68] *See* Joe Mysak, *California Declares War on State Bond Short-Sellers,* Bloomberg (Apr. 27, 2010), available at *http://www.bloomberg.com/news/2010-04-28/california-declares-war-on-short-sellers-of-bonds-commentary-by-joe-mysak.html.*

[69] *See* Joe Mysak, *Swaps Nightmares Become Real for Amateur Financiers,* Bloomberg (Dec. 15, 2009), available at *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aVCDZ6c1PYC0.*

[70] *See id.*

[71] *See, e.g.,* William Selway, *Derivatives Sold to Governments Get Dodd-Frank Disclosure: One Year Later,* Bloomberg (Jul. 18, 2011), available at *http://www.bloomberg.com/news/2011-07-18/derivatives-sold-to-governments-get-dodd-frank-disclosure-one-year-later.html*; 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*; Transcript of the U.S. Securities and Exchange Commission Birmingham Field Hearing on the State of the Municipal Securities Market, at 239–240 and 243.

[72] *See* Proposal, 76 FR 826.

Act'') [73] and the Exchange Act [74] were both enacted with exemptions for municipal securities, except for the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.[75] In the early 1970s, the municipal securities market was still relatively small.[76] 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.[77]

In 1975, Congress granted new authority to regulate intermediaries in the market for municipal securities. As part of the Securities Acts Amendments of 1975 (''1975 Amendments''), Congress created a limited regulatory scheme for the municipal securities market at the federal level.[78] That scheme included mandatory registration with the Commission for brokers, dealers, and municipal securities dealers involved in effecting municipal securities transactions,[79] and gave the Commission broad rulemaking and enforcement authority over such persons.[80] In addition, the 1975 Amendments authorized the creation of the MSRB and granted it authority to promulgate rules concerning transactions in municipal securities by brokers, dealers, and municipal securities dealers. The 1975 Amendments, however, did not create a regulatory scheme for, or impose any new requirements on, municipal issuers. Rather, the 1975 Amendments expressly prohibited the Commission and the MSRB from requiring municipal securities issuers, either directly or indirectly, to file any application, report, or document with the Commission or the MSRB prior to any sale by the issuer.[81]

As noted above and in the Proposal, pursuant to the 1975 Amendments, unless an exception or exemption applies, all brokers, dealers, and municipal securities dealers that underwrite or trade municipal securities are required to register with the Commission.[82] All brokers, dealers, and municipal securities dealers that engage in municipal securities transactions also must register with the MSRB and comply with its rules.[83] Furthermore, unless it is a bank, each broker, dealer, and municipal securities dealer that engages in municipal securities transactions must be a member of FINRA.[84] FINRA is required to examine brokers, dealers, and municipal securities dealers for compliance with the Exchange Act, rules and regulations thereunder, and MSRB rules.[85] Bank municipal securities dealers are examined by their appropriate regulatory agencies.[86]

Since 1975, the municipal securities market has grown and evolved significantly to encompass a wide variety of bond structures [87] and credit enhancements. The variety of financing options has led municipal entities to increasingly rely on external advisors to assist them in deciding among the structural choices for their debt and to help them negotiate with a variety of specialized intermediaries.[88] For example, municipal bond insurance was first introduced in 1971.[89] The introduction of variable rate municipal bonds in the early 1980s increased the use of letter of credit-supported municipal bonds.[90] In 1988, auction rate securities were introduced into the municipal market.[91] In addition, derivative products have been utilized by municipal securities issuers beginning generally with interest rate swap transactions in the mid-1980s. The derivatives utilized since then have become more complex.[92]

b. Municipal Advisors

As discussed above and in the Proposal,[93] many market participants advise municipal entities about the issuance of municipal securities and municipal financial products. Historically, however, these participants have been largely unregulated with respect to their municipal advisory activities. In addition, Commission staff has taken the position that financial advisors that limit their advisory activities solely to advising municipal issuers as to the structuring of their

[73] 15 U.S.C. 77a *et seq.*

[74] 15 U.S.C. 78a *et seq.*

[75] *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. 77*l*(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)).

[76] There were $235.4 billion of municipal bonds outstanding in 1975 after an issuance of $58 billion in that year. *See* The Bond Buyer's Municipal Finance Statistics, 1975 (June 1976). At the end of 1976, there were $323 billion of corporate bonds outstanding, which was about one third more than state and local government securities and about half as much as U.S. Treasury securities. *See* Federal Reserve Bank of New York, the Market for Corporate Bonds (Autumn 1977). As of the first quarter of 2013, there were approximately $3.7 trillion of municipal bonds outstanding, $13 trillion of corporate and foreign bonds outstanding, and $12 trillion of Treasury securities outstanding. *See* Federal Reserve Board, *Financial Accounts of the United States—Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts,* Tables L.209, 211 and 212, (First Quarter 2013), available at *http://www.federalreserve.gov/releases/z1/current/z1.pdf.*

[77] *See* Ann Judith Gellis, *Municipal Securities Market: Same Problems—No Solutions,* 21 Del. J. Corp. L. 427, 428 (1996).

[78] *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. 78*o*(c)(1), 78*o*(c)(2), 78*o*–4(c)(1), 78*o*–4(c)(2), 78q(a), 78q(b), and 78u(a)(1)).

[79] 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. *See* 15 U.S.C. 78c(a)(30).

[80] *See supra* note 78. Enforcement activities regarding municipal securities dealers must be coordinated by the Commission, the Financial Industry Regulatory Authority (''FINRA''), and the appropriate bank regulatory agency. *See* Exchange Act Sections 15B(c)(6)(A), 15B(c)(6)(B), and 17(c) (15 U.S.C. 78*o*–4(c)(6)(A), 78*o*–4(c)(6)(B), 78q(c)).

[81] Section 15B(d)(1) of the Exchange Act (commonly known as the ''Tower Amendment'') provides that ''[n]either the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.'' 15 U.S.C. 78*o*–4(d)(1).

[82] *See* 15 U.S.C. 78*o*–4(a)–(b). *See also* Proposal, 76 FR 827.

[83] *See* 15 U.S.C. 78*o*–4(c)(1). *See also* MSRB, Registration Guidelines for Regulated Entities, available at *http://www.msrb.org/Rules-and-Interpretations/~/media/Files/User-Manuals/GuidelinesforRegistration.ashx.*

[84] *See* 15 U.S.C. 78*o*(b)(8) and 78*o*–4(a).

[85] *See* 15 U.S.C. 78*o*–4(c)(7).

[86] The term ''appropriate regulatory agency,'' when used with respect to a municipal securities dealer, is defined in Section 3(a)(34)(A) of the Exchange Act. 15 U.S.C. 78c(a)(34)(A). The Commission also has the authority to examine all registered municipal securities dealers. *See* 15 U.S.C. 78q(b)(1).

[87] 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 46, at 54–55 (discussion of conduit bonds).

[88] *See* Vijayakumar and Daniels, *supra* note 34, at 43–44.

[89] *See* Gray and Cusatis, *supra* note 87, at 30–31.

[90] *See id.* As the Commission noted in the Proposal, although the use of letters of credit and bond insurance has declined since 2008, these forms of credit enhancement remain an option for municipal entities to consider when issuing municipal securities. *See* 76 FR 827, note 48. *See also* 2012 Report on the Municipal Securities Market, *supra* note 45, at 10–11.

[91] *See* Gray and Cusatis, *supra* note 87, at 41.

[92] *See id.,* at 49. Municipal 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. The most common use for derivatives in the municipal securities market is the use of interest rate swaps for new, anticipated, or outstanding debt. *See id.*

[93] *See* Proposal, 76 FR 827.

financings may not need to register as investment advisers.[94]

Approximately fifteen states, however, 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 apply only to specific situations.[95] Some state and local entities also require certain types of municipal advisors to disclose actual or apparent conflicts of interest.[96]

B. Dodd-Frank Act and the Need for Oversight

As discussed in more detail below and in the Proposal,[97] the Dodd-Frank Act amended the Exchange Act to require municipal advisors to register with the Commission.[98] In addition, the Exchange Act, as amended by the Dodd-Frank Act, grants the MSRB regulatory authority over municipal advisors [99] and imposes a fiduciary duty on municipal advisors when advising municipal entities.[100]

The Commission believes that regulation of municipal advisors is in the public interest and will improve the protection of municipal entities, including the protection of municipal entities in their capacities as investors, and those who invest in municipal securities. As noted above,[101] according to a Senate Report related to the Dodd-Frank Act, ''[t]he $3 trillion municipal securities market is subject to less supervision than corporate securities markets, and market participants generally have less information upon which to base investment decisions. During the [financial] crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries.'' [102] Accordingly, in response to the financial crisis that began in 2008, the Dodd-Frank Act amended the Exchange Act to require ''a range of municipal financial advisors to register with the [Commission] and comply with regulations issued by the [MSRB].'' [103]

A number of actions brought by the Commission against municipal market participants also highlight the abuses in the municipal securities market. For example, the Commission brought a number of actions alleging payments by J.P. Morgan Securities Inc. (now J.P. Morgan Securities LLC) to local firms whose principals or employees were friends of public officials of Jefferson County, Alabama in connection with a $5 billion bond underwriting and interest rate swap agreement business.[104] In addition, the Commission has settled several actions against major financial institutions for their role in a series of complex, wide-ranging bid-rigging schemes involving derivatives utilized by municipalities and underlying obligors as reinvestment products.[105] Further, in August 2011, the Commission filed a civil injunctive action against Stifel, Nicolaus & Co., Inc. and its former Senior Vice President, David Noack, for allegedly violating federal securities laws in connection with a $200 million sale of highly leveraged and unsuitably risky derivatives to five Wisconsin school districts.[106] According to the complaint, Stifel and Noack misrepresented the risks of the investments and failed to disclose material facts to the school districts.

C. Interim Final Temporary Rule 15Ba2–6T and Form MA–T

The registration requirement for municipal advisors established by the Dodd-Frank Act became effective on October 1, 2010.[107] To enable municipal advisors to temporarily satisfy the registration requirement, and to make relevant information available to the public and municipal entities, the Commission adopted interim final temporary Rule 15Ba2–6T [108] on September 1, 2010.[109] Pursuant to Rule 15Ba2–6T, a municipal advisor may temporarily satisfy the statutory registration requirement by submitting certain information electronically

[94] *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* (''Staff Legal Bulletin No. 11'') (explaining 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).

[95] *See* MSRB Study, *supra* note 35, at 4.

[96] *See id.,* at 6.

[97] *See, generally,* Proposal, 76 FR 824.

[98] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

[99] *See* 15 U.S.C. 78*o*–4(b).

[100] *See* 15 U.S.C. 78*o*–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. 78*o*–4(c)(1). The Commission notes that a number of commenters discussed the applicability of fiduciary duty to municipal advisors. This adopting release generally does not address those comments, as this release generally concerns the registration of municipal advisors. The Commission notes, however, that the fiduciary duty of a municipal advisor, as set forth in Exchange Act Section 15B(c)(1), extends only to its municipal entity clients. The Exchange Act does not impose a fiduciary duty with respect to advice to obligated persons. *See infra* note 202 and accompanying text (discussing the definition of the term ''obligated person'').

[101] *See supra* notes 3–4 and accompanying text.

[102] *See* S. Rep. No. 111–176, at 38 (2010).

[103] *See id.*

[104] The Commission had alleged that J.P. Morgan Securities engaged in an improper payment scheme in connection with obtaining municipal securities underwriting and interest swap agreement business from Jefferson County, Alabama. The Commission had alleged that J.P. Morgan Securities incorporated certain of the costs of these payments into higher swap interest rates that it charged the County, directly increasing the swap transaction costs to the County and its taxpayers. J.P. Morgan Securities was censured, paid a $25 million civil penalty, made a $50 million payment to the County, and forfeited more than $647 million in claimed termination fees under the swaps. *See In the Matter of J.P. Morgan Securities Inc.,* Securities Exchange Act Release No. 60928 (Nov. 4, 2009) (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order). *See also SEC* v. *Larry P. Langford, et al.,* Litigation Release No. 20545 (Apr. 30, 2008) and *SEC* v. *Charles E. LeCroy and Douglas W. MacFaddin,* Litigation Release No. 21280 (Nov. 4, 2009) (charging an Alabama local government official, a bond dealer and J.P. Morgan Securities employees with conducting undisclosed payment schemes in connection with awarding Jefferson County municipal bond and swap agreement business).

[105] Collectively, the five financial institutions, Banc of America Securities LLC, UBS Financial Services Inc., J.P. Morgan Securities LLC, Wachovia Bank, N.A., and GE Funding Capital Market Services, Inc., paid $205 million to settle the Commission actions, all of which was distributed to hundreds of harmed municipal entities or borrowers, located in 47 states, the District of Columbia, Guam, and Puerto Rico, as well as an additional $540 million to settle parallel proceedings by other federal and state authorities for their misconduct. *See In the Matter of Banc of America Securities,* Securities Exchange Act Release No. 63451 (Dec. 7, 2010); *SEC* v. *UBS Financial Services Inc.,* Civil Action No. 11–CV–2885 (D.N.J. May 4, 2011); *SEC* v. *J.P. Morgan Securities LLC.,* Civil Action No. 11–CV–3877 (D.N.J. Jul. 7, 2011); *SEC* v. *Wachovia Bank, N.A.,* Civil Action No. 2:11–cv–07135–WJM–MF (D.N.J. Dec. 8, 2011); *SEC* v. *GE Funding Capital Market Services, Inc.,* Civil Action No. 2:11–cv–07465–WJM–MF (D.N.J. Dec. 23, 2011).

[106] *See SEC* v. *Stifel, Nicolaus & Co., Inc. and David W. Noack,* Civil Action No. 2:11–cv–00755–AEG (E.D. Wisc. Aug. 10, 2011). The Commission also charged, and settled with, RBC Capital Markets, LLC for their involvement in these sales. According to the order instituting administrative and cease-and-desist proceedings, RBC negligently recommended and sold these investments, despite significant internal concerns about the suitability of the investments for municipalities like the school districts. Moreover, RBC's marketing materials failed to explain adequately the risks associated with the investments. *See In the Matter of RBC Capital Markets, LLC,* Securities Exchange Act Release No. 65404 (Sept. 27, 2011).

[107] *See* Section 975(i) of the Dodd-Frank Act.

[108] 17 CFR 240.15Ba2–6T.

[109] *See* Temporary Registration Rule Release, *supra* note 5.

through the Commission's public Web site on Form MA–T.[110]

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.[111]

As originally adopted, the interim final temporary rule provided that, unless rescinded, a municipal advisor's temporary registration by means of Form MA–T would 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.[112] The temporary registration procedure was developed as a transitional step toward the implementation of a permanent registration regime, which, as discussed below, the Commission is adopting today. On December 21, 2011, the Commission extended the expiration date of the temporary registration regime to September 30, 2012, in order to continue to provide a method for municipal advisors to temporarily satisfy the statutory registration requirement.[113] On September 21, 2012, the Commission further extended the expiration date of the temporary registration regime to September 30, 2013.[114] Today, in a separate release, the Commission is extending the expiration date of the temporary registration regime to December 31, 2014.[115] This extension will enable municipal advisors that are required to register with the Commission on or after the Effective Date but before the applicable compliance date to continue to register under the temporary registration regime.

D. Proposal To Establish a Registration Regime for Municipal Advisors

In light of the requirements of Section 975 of the Dodd-Frank Act, and in anticipation of the expiration of Rule 15Ba2–6T, on December 20, 2010, the Commission proposed Rules 15Ba1–1 to 15Ba1–7 under the Exchange Act and Forms MA, MA–I, MA–W, and MA–NR to establish a permanent registration regime for all persons meeting the definition of municipal advisor, including those persons currently registered on Form MA–T.[116] The Proposal was published for comment in the **Federal Register** on January 6, 2011.[117]

In response to the Proposal, the Commission received over 1,000 unique comment letters from broker-dealers, investment advisers, individuals, banks, municipal entities, attorneys, engineers, and other market participants.[118] In general, commenters supported the Proposal's overarching goal to establish a permanent registration regime for municipal advisors. As discussed further below, however, many commenters recommended that the Proposal be modified or clarified in certain respects.

The Commission has carefully considered these comments and is adopting Rules 15Ba1–1 to 15Ba1–8 and 15Bc4–1 under the Exchange Act and Forms MA, MA–I, MA–W, and MA–NR, with revisions as appropriate. In discussing these rules and forms, the Commission highlights and addresses below commenters' main issues, concerns, and suggestions.

The Commission believes that the information required to be disclosed pursuant to the new rules and forms will enhance the Commission's oversight of municipal advisors and their activities in the municipal securities market. Moreover, the Commission believes the information provided pursuant to these rules and forms will aid municipal entities and obligated persons in choosing municipal advisors and engaging in transactions or investments with municipal advisors.

III. Discussion

Section 15B(a)(1) of the Exchange Act, as amended by the Dodd-Frank Act, makes it unlawful for a municipal advisor[119] 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.[120] 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 the protection of investors.[121]

Consistent with the requirements of the Dodd-Frank Act, as discussed in detail below, the Commission is adopting new rules and forms that establish a Commission registration regime for municipal advisors, which the Commission believes is necessary and appropriate in the public interest and will improve the protection of municipal entities and investors in municipal securities.

A. Rules for the Registration of Municipal Advisors

1. 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,[122] as amended by the Dodd-Frank Act, defines the term ''municipal advisor'' to mean a person (who is not a municipal entity[123] or an employee of

[110] 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. As of March 31, 2013, there were approximately 1,130 Form MA–T registrants.

[111] *See* Temporary Registration Rule Release, *supra* note 5, for a full description of the requirements of Form MA–T.

[112] *See* Temporary Registration Rule Release, 75 FR 54471.

[113] *See* Securities Exchange Act Release No. 66020 (December 21, 2012), 76 FR 80733 (December 27, 2011).

[114] *See* Securities Exchange Act Release No. 67901 (September 21, 2012), 77 FR 59061 (September 26, 2012). As extended, all temporary municipal advisor registrations 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 adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) on September 30, 2013. *See* 17 CFR 240.15Ba2–6T(e).

[115] *See* Rule 15Ba2–6T and Form MA–T Extension Release, *supra* note 7.

[116] *See* Proposal, 76 FR 824.

[117] *See id.*

[118] *See http://www.sec.gov/comments/s7-45-10/s74510.shtml.* The Commission has also considered the comment letters that were submitted in response to the publication of the Temporary Registration Rule Release. *See http://sec.gov/comments/s7-19-10/s71910.shtml* (comments received on the Temporary Registration Rule Release).

[119] *See infra* Section III.A.1. (discussing the term ''municipal advisor'').

[120] *See* 15 U.S.C. 78*o*–4(a)(1)(B). For a discussion of the terms ''municipal entity,'' ''obligated person,'' ''municipal financial products,'' and ''solicitation of a municipal entity or obligated person,'' *see infra* Section III.A.1.b.

[121] *See* 15 U.S.C. 78*o*–4(a)(2).

[122] 15 U.S.C. 78*o*–4(e)(4)(A).

[123] *See infra* Section III.A.1.b.ii. (discussing the term ''municipal entity'').

a municipal entity [124]) that (i) provides advice to or on behalf of a municipal entity or obligated person [125] with respect to municipal financial products [126] or the issuance of municipal securities,[127] including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) undertakes a solicitation of a municipal entity.[128] As discussed in the Proposal,[129] the statutory definition of 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'' [130] that engage in municipal advisory activities.[131]

The statutory definition of municipal advisor includes distinct groups of professionals that offer different services and compete in distinct markets. As noted in the Proposal, the three principal types of municipal advisors are: (1) financial advisors, including, but not limited to, brokers, dealers, and municipal securities 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; [132] (2) investment advisers that advise municipal entities on the investment of public monies, including the proceeds of municipal securities; [133] and (3) third-party marketers and solicitors.

Relevant exclusions from the definition of a municipal advisor also limit the scope of the three types of municipal advisors. The statutory definition of municipal advisor explicitly excludes ''a broker, dealer, or municipal securities dealer serving as an underwriter . . ., attorneys offering legal advice or providing services that are of a traditional legal nature, [and] engineers providing engineering advice[.]'' [134] Further, the statutory definition of municipal advisor excludes ''any investment adviser registered under the Investment Advisers Act of 1940 [(''Investment Advisers Act'')], 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[.]'' [135] As discussed more fully below in Section III.A.1.c., the Commission also proposed Rule 15Ba1–1(d)(2), and is adopting with modifications as Rules 15Ba1–1(d)(2) and 15Ba1–1(d)(3) a definition of ''municipal advisor'' that interprets those exclusions and provides other activity-based (but not status-based) exemptions.

The Commission also noted in the Proposal that, in defining the term municipal advisor in Exchange Act Section 15B(e)(4), Congress did not distinguish between persons who are compensated for providing advice and those who are not. Accordingly, as explained in the Proposal, the Commission believes compensation for providing advice with respect to municipal financial products or the issuance of municipal securities should not factor into the determination of whether a person must register with the Commission as a municipal advisor.[136] However, as clarified in this release, whether or not a person would have to register as a municipal advisor in connection with solicitation of a municipal entity or obligated person would depend upon whether such person receives compensation (direct or indirect).[137]

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

As noted above, Exchange Act 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.[138] 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.[139] Rule 15Ba1–1(d), as proposed [140] and adopted, provides that the term ''municipal advisor'' has the same meaning as in Exchange Act Section 15B(e)(4),[141] and, as discussed in Section III.A.1.c., provides certain exclusions and exemptions. For the purposes of clarity, however, Rule 15Ba1–1(d) as adopted also includes several non-substantive and organizational changes. For example, it: (1) incorporates in Rule 15Ba1–1(d)(1) the language of the statutory definition, rather than cross referencing the statute; (2) sets forth in Rule 15Ba1–1(d)(2) the statutory exclusions from the definition, as interpreted by the Commission; and (3) sets forth in Rule 15Ba1–1(d)(3) certain exemptions.[142]

In certain of the rules and forms that the Commission is adopting with respect to the registration of municipal advisors, the Commission uses the term ''municipal advisory activities'' to refer to the activities that would generally require a person to register as a municipal advisor. In this regard, the Commission is adopting, substantially as proposed, a definition of the term ''municipal advisory activities'' with minor clarifying modifications. As

[124] *See infra* Section III.A.1.c.i. (discussing the Commission's interpretation of the exclusion for employees of a municipal entity from the definition of the term ''municipal advisor'' and a parallel exemption for employees of obligated persons).

[125] *See infra* Section III.A.1.b.iii. (discussing the term ''obligated person'').

[126] *See infra* Section III.A.1.b.iv. (discussing the term ''municipal financial products'').

[127] *See infra* Section III.A.1.b.vii. (discussing the term ''issuance of municipal securities'').

[128] *See infra* Section III.A.1.b.x. (discussing the term ''solicitation of a municipal entity or obligated person'').

[129] *See* Proposal, 76 FR 828.

[130] *See* 15 U.S.C. 78*o*–4(e)(4).

[131] *See infra* note 143 and accompanying text (discussing the definition of ''municipal advisory activities'').

[132] *See* Proposal, 76 FR 829. For clarity, the Commission notes that financial advisors as referred to herein also include swap advisors, including some that are registered with the CFTC or the SEC in other capacities, that provide advice to municipal entities on their use of municipal financial products.

[133] *See infra* Section III.A.1.b.iv. (discussing the term ''proceeds of municipal securities'').

[134] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[135] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[136] *See* Proposal, 76 FR 832, note 113 and accompanying text.

[137] *See infra* note 409 and accompanying text.

[138] *See* 15 U.S.C. 78*o*–4(e)(4). As noted in the Proposal, the Commission interprets the definition of ''municipal advisor'' to include the solicitation of a municipal entity or obligated person, because, as noted in the Proposal, the definition of municipal advisor under Exchange Act Section 15B(e)(4)(A) means, in part, a person that ''undertakes a solicitation of a municipal entity,'' and in defining the phrase ''solicitation of a municipal entity,'' Exchange Act Section 15B includes within that phrase, ''or obligated person.'' Also, Exchange Act Section 15B(a)(1)(B) includes solicitations of obligated persons. *See* Proposal, 76 FR 831, note 102 and accompanying text.

See also Rule 15Ba1–1(d)(1)(i), which makes clear in the definition of ''municipal advisor'' that the Commission interprets the term ''municipal advisor'' to include persons that undertake solicitation of a municipal entity *or* obligated person.

[139] The Commission discusses the statutory exclusion for ''an employee of a municipal entity,'' along with other exclusions and exemptions from the definition of ''municipal advisor,'' in Section III.A.1.c. below.

[140] *See* proposed Rule 15Ba1–1(d)(1).

[141] 15 U.S.C. 78*o*–4(e)(4).

[142] *See* Rule 15Ba1–1(d). To the extent the Commission's exemptions or interpretations of the exclusions differ substantively from the Proposal, those differences are discussed in detail below.

adopted, ''municipal advisory activities'' means ''(1) [p]roviding 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 (2) [s]olicitation of a municipal entity or obligated person.'' [143] The Commission notes, for example, that advice to a municipal entity about whether to issue municipal securities would be ''municipal advisor activity.''

Additionally, as discussed more fully below, in response to comments received on the Proposal and to provide additional clarity, the Commission is adopting rule text to provide guidance on the term ''advice.'' The Commission also notes, as mentioned above and explained in more detail below, that the definitions of ''municipal advisor'' and related terms that it is adopting today include several non-substantive, clarifying changes designed to reorganize and simplify the rule, including using defined terms, where possible, and providing greater clarity as to which statutory standards are being incorporated into the Commission's rules, the Commission's interpretation of such standards, and any exemptions the Commission is providing with these rules.

i. Advice Standard in General

In the Proposal and as noted above, the Commission defined the term ''municipal advisory activities,'' which includes certain advice to or on behalf of a municipal entity or obligated person,[144] and addressed the scope of activities that would require a person to register as a municipal advisor. The Commission discussed the scope of such activities through its proposed interpretation of the definition of ''municipal advisor,'' which included guidance on the particular statutory exclusions and exemptions therefrom.[145]

In the Proposal, the Commission requested comment on its interpretation of the definition of ''municipal advisor'' and related terms, and particularly sought comment on whether any of its interpretations should be in any way modified or clarified.[146] The Commission also requested comment on whether its interpretation of certain exclusions from the definition of ''municipal advisor'' should be narrowed or expanded to exclude or include various activities.[147] More specifically, the Commission requested comment on whether it should exclude the following persons from the definition of municipal advisor: (1) 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; and (2) 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 or investment objectives.[148]

In response to these requests for comment, commenters recommended additional guidance on the meaning and scope of the term ''advice'' both in general and, as addressed in more detail in subsequent sections on particular exclusions and exemptions, in the context of specific activities. A number of commenters requested that the Commission clarify the meaning of providing ''advice to a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities.'' [149] One commenter noted that ''the concept of 'advice' is central to the application

[143] In the Proposal, the Commission proposed to give ''municipal advisory activities'' the same meaning as the term ''municipal advisory services'' in Rule 15Ba2–6T (the temporary rule for the registration of municipal advisors). Thus, in proposed Rule 15Ba1–1(e), the Commission proposed 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. 78*o*–4(e)(8)) or obligated person (as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–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.'' *See* Proposal, 76 FR 829, note 77 and proposed Rule 15Ba1–1(e).

While the Commission received a few comments that certain activities should not be ''municipal advisory activities,'' these comments were in the context of whether certain persons should be subject to registration as ''municipal advisors'' and are addressed below in the context of the various exemptions and exclusions from the definition of ''municipal advisor.'' *See, e.g.,* notes 780, 807, 835 and accompanying text (citing the Gilmore & Bell Letter, the Rose Letter, and the Brinckerhoff Letter, in the context of exclusions or exemptions for accountants, attorneys, and engineers, respectively). These comments are addressed in Section III.A.1.c.vii.

The Commission is adopting the definition of ''municipal advisory activities'' substantially as proposed, but with minor non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the definitions. Specifically, the Commission is defining ''municipal advisory activities'' to mean ''the following activities specified in section 15B(e)(4)(A) of the Act (15 U.S.C. 78*o*–4(e)(4)(A)) and paragraph (d)(1) of this section that, absent the availability of an exclusion under paragraph (d)(2) of this section or an exemption under paragraph (d)(3) of this section, would cause a person to be a municipal advisor: (1) [P]roviding 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 (2) [s]olicitation of a municipal entity or obligated person.'' *See* Rule 15Ba1–1(e).

[144] *See* Proposal, 76 FR 829, note 77. *See also supra* note 143 and accompanying text (discussing the term ''municipal advisory activities'').

[145] *See, e.g.,* Proposal 76 FR 832, text accompanying note 113 (discussing whether compensation for providing advice factors into the determination of whether a person must register as a municipal advisor), 833, note 118 and accompanying text (discussing the provision of certain kinds of advice by investment advisers), 833 (discussing whether a commodity trading advisor would be required to register as a municipal advisor if the advisor provides certain kinds of advice), and 833–834 (discussing with respect to accountants, attorneys and engineers whether certain kinds of advice and activities are ''advice'' within the meaning of the Exchange Act or would otherwise cause such persons to meet the definition of ''municipal advisor'').

[146] *See* Proposal, 76 FR 835.

[147] *See id.,* at 836–838 (requesting comment on, among other things: whether there are other services or activities engaged in by accountants, engineers, attorneys or other professionals that should qualify such persons for exclusion from the definition of ''municipal advisor;'' and whether there are other specific types of persons that should be excluded and the circumstances under which they should be excluded).

[148] *See* Proposal, 76 FR 838.

[149] *See, e.g.,* letters from Raymond J. Dorado, Executive Vice President, Deputy General Counsel, Bank of New York Mellon Corporation, dated February 23, 2011 (''BNY Letter''); Wayne A. Abernathy, Executive Vice President, Financial Institutions Policy and Regulatory Affairs, American Bankers Association, Cecelia A. Calaby, Executive Director and General Counsel, ABA Securities Association, and Eli K. Peterson, Vice President and Regulatory Counsel, The Clearing House Association LLC, dated February 22, 2011 (''American Bankers Association Letter I''); Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, dated February 22, 2011 (''Financial Services Roundtable Letter''); John M. McNally, President, National Association of Bond Lawyers, dated February 25, 2011 (''NABL Letter''); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 22, 2011 (''SIFMA Letter I''); Alexandra M. MacLennan, Chair, Disclosure Group, and D. Bruce Gabriel, Practice Group Leader, Public and Infrastructure Finance Group, Squire, Sanders & Dempsey (US) LLP, dated February 22, 2011 (''Squire Sanders & Dempsey Letter''); Adella M. Heard, Senior Vice President and Assistant General Counsel, First Tennessee Bank National Association, dated February 18, 2011 (''First Tennessee Bank Letter''); Dale E. Brown, President and Chief Executive Officer, Financial Services Institute, dated April 28, 2011 (''Financial Services Institute Letter''); Sandra K–H Werner, Chief Executive Officer, First National Bank and Trust, dated February 18, 2011 (''First National Bank and Trust Letter'').

of Section 975,'' [150] while another commenter stated that ''[a]bsent a clear understanding of the scope of 'advice,' there will be substantial uncertainty as to which communications with municipal entity clients would be deemed 'advice.''' [151] The Commission also received comments suggesting general parameters for defining advice. For example, one commenter suggested that the Commission ''distinguish between situations in which *information* is provided to a municipal entity or obligated person as opposed to a *recommendation* as to a specific course of action.'' [152] Similarly, another commenter suggested that ''advice'' is generally understood to contain a recommendation component as distinguished from the mere giving of factual, objectively-determinable information.[153]

Regarding the provision of general information, commenters made general and specific suggestions regarding the types of information that should not require registration as a municipal advisor. For example, one commenter suggested that the provision of general information should not be defined, in any instance, as municipal advisory activities that would give rise to a fiduciary duty.[154] More specifically, other commenters suggested that broker-dealers be permitted to provide general market, transactional or financial information,[155] attorneys be permitted to provide general educational information to clients and non-clients,[156] and insurance companies be permitted to provide certain general information of an educational nature regarding retirement plans without being required to register as a municipal advisor.[157] With respect to municipal derivatives, one commenter asked for clarification that the following activities do not constitute advice for purposes of the municipal advisor definition: (i) The provision of research, general market information, and product information that is not specific to a particular client and is provided to the bank's customers as part of its ordinary communications with clients or the public; and (ii) the provision of information describing product alternatives that may meet the needs of a client without giving a recommendation that the client engage in any specific transaction.[158]

Additionally, several commenters recommended that advice be defined in accordance with its commonly understood meaning—a recommendation to act.[159] One of these commenters further recommended that the Commission clarify that a communication constitutes advice only when ''it is provided with respect to and directly relates to an enumerated municipal financial product or the issuance of municipal securities, and it is a recommendation that is particularized to the needs and circumstances of the recipient such that, under the prevailing facts and circumstances, a municipal entity or obligated person would reasonably expect that it could rely and take action, without further input, based upon such communication.'' [160] Another commenter suggested that registration be required only if a communication constitutes a recommendation that the municipal entity take an action and the recommendation is particularized to the entity's needs and is distinct from normal sales efforts.[161]

The Commission agrees with commenters that clarifying guidance on what constitutes advice solely for the purposes of the municipal advisor definition will provide greater clarity regarding the applicability of the municipal advisor registration requirement. The Commission does not however believe that the term ''advice'' is susceptible to a bright-line definition. Instead, the Commission believes that ''advice'' can be construed broadly and that, therefore, the determination of whether a person provides advice to or on behalf of a municipal entity or an obligated person regarding municipal financial products or the issuance of municipal securities depends on all the relevant facts and circumstances.[162] Accordingly, to address comments, the Commission is adopting Rule 15Ba1–1(d)(1)(ii), which provides that advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities, including with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues.[163]

The Commission agrees with commenters that the provision of certain general information does not constitute advice for purposes of the municipal advisor definition. For example, the Commission believes that advice does not include provision of the following general information:

- Information of a factual nature without subjective assumptions, opinions, or views;
- Information that is not particularized to a specific municipal entity or type of municipal entity;
- Information that is widely disseminated for use by the public,

[150] BNY Letter.

[151] Financial Services Roundtable Letter.

[152] NABL Letter (emphasis in original).

[153] Letter from John J. Wagner, Kutak Rock, dated February 21, 2011 (''Kutak Rock Letter'').

[154] *See* letter from Anthony A. Kuznik, Vice President and General Counsel, Honeywell Building Solutions, Honeywell International Inc., dated February 22, 2011 (''Honeywell Letter'').

[155] *See* letter from Brad Winges, Head of Fixed Income Sales and Trading, Piper Jaffray & Co. and Rebecca S. Lawrence, Assistant General Counsel, Principal, Piper Jaffray & Co., dated March 18, 2011 (''Piper Jaffray Letter'').

[156] *See* letter from Sherman & Howard L.L.C., dated February 22, 2011 (''Sherman & Howard Letter'').

[157] *See* letter from Jeffrey W. Rubin, Chair of the Committee on Federal Regulation of Securities, Business Law Section, American Bar Association, dated March 1, 2011 (''ABA Letter'').

[158] *See* BNY Letter.

[159] *See, e.g.,* BNY Letter; American Bankers Association Letter I; and SIFMA Letter I. *See also* Kutak Rock Letter.

[160] SIFMA Letter I.

[161] *See* American Bankers Association Letter I.

[162] In contexts outside of the municipal advisor definition, whether certain activities constitute advice also is dependent on the facts and circumstances.

For example, in the context of broker-dealer regulation, Commission staff has described that, although not a bright-line test, ''[t]he more individually tailored the communication is to a particular customer or targeted group of customers, the more likely it will be viewed as a recommendation.'' Study on Investment Advisers and Broker-Dealers (January 2011), available at *http://www.sec.gov/news/studies/2011/913studyfinal.pdf* (''Study on Investment Advisers and Broker-Dealers'') at 124.

In the context of investment adviser regulation, the determination of whether a particular communication rises to the level of investment advice depends on the facts and circumstances and is construed broadly. For example, Commission staff has interpreted the definition of investment adviser to include persons who advise clients concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments. *See, e.g.,* Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (October 8, 1987).

The Commission discusses below, with respect to its interpretation of the term ''municipal advisor'' and the various exclusions and exemptions therefrom, whether certain activities would be advice in the context of the municipal advisor registration regime.

[163] The Commission is providing this clarifying guidance regarding ''advice'' only with respect to municipal advisors and solely for purposes of the municipal advisor definition. The Commission further notes that, by establishing certain parameters for advice, Rule 15Ba1–1(d)(1)(ii) clarifies not only the type of information or communications that may constitute advice, but also the persons who may be subject to the municipal advisor definition in Section 15B(e)(4) of the Exchange Act (15 U.S.C. 78*o*–4(e)(4)). For example, the Commission believes that an individual performing by contract clerical or ministerial services for a municipal entity or obligated person as part of performing these services would generally not be providing advice, as defined in adopted Rule 15Ba1–1(d)(1)(ii). Accordingly, such person would not be required to register as a municipal advisor.

clients, or market participants other than municipal entities or obligated persons; or

- General information in the nature of educational materials.

The Commission believes that educational materials constitute general information if the content is limited to instructional or explanatory information, such as materials that describe the general nature of financial products or strategies, do not include past or projected performance figures (including annualized rate of return), do not include a recommendation to purchase or sell any product or utilize any particular strategy, and to the extent additional disclosure is available about a product (such as a prospectus), the materials contain information about how to obtain such additional information.[164]

Conversely, the definition of advice under Rule 15Ba1–1(d)(1)(ii), as adopted, does not exclude information that involves a recommendation[165] regarding municipal financial products or the issuance of municipal securities. Further and more precisely, the Commission believes that, for purposes of the municipal advisor definition, advice includes, without limitation, a recommendation that is particularized to the specific needs, objectives, or circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, based on all the facts and circumstances. As discussed above and consistent with the FINRA approach to what constitutes a recommendation, for purposes of the municipal advisor definition, the Commission believes that the determination of whether a recommendation has been made is an objective rather than a subjective inquiry.[166] An important factor in this inquiry is whether, considering its content, context and manner of presentation, the information communicated to the municipal entity or obligated person reasonably would be viewed as a suggestion that the municipal entity or obligated person take action or refrain from taking action regarding municipal financial products or the issuance of municipal securities.[167]

While the determination of whether a person provides advice depends on all the relevant facts and circumstances, the more individually tailored the information to a specific municipal entity or obligated person or a targeted group of municipal entities or obligated persons that share common characteristics, such as school districts or hospitals, with respect to municipal financial products or the issuance of municipal securities, the more likely it will be a recommendation that constitutes advice under the municipal advisor definition, which would require registration as a municipal advisor, absent the application of an exemption or exclusion from registration.[168] For example, whether information describing municipal financial product alternatives constitutes advice under the municipal advisor definition generally depends on how individually tailored the information is to a particular municipal entity, obligated person, or targeted group of municipal entities or obligated persons that share common characteristics, as well as the content, context, and manner of presentation of the information communicated.

ii. 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.''[169] In the Proposal, the Commission proposed to clarify that, with respect to clause (B) of the definition of ''municipal entity,'' the definition includes, but is not limited to, public pension funds, LGIPs, 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.[170]

In the Proposal, the Commission requested comment on whether the proposed interpretation of municipal entity for purposes of the proposed definition of municipal advisor is appropriate, and whether additional clarification is necessary.[171] The Commission received approximately 20 comment letters regarding the scope of the Commission's interpretation of the term ''municipal entity.'' Based on consideration of the comments received, as further discussed below, the Commission is making one change to its interpretation.

Several commenters suggested that the definition of ''municipal entity'' should be limited to issuers of municipal securities[172] because the

[164] The Commission has similarly interpreted ''educational materials'' in other contexts. *See, e.g.,* Securities Act Release No. 6426 (September 16, 1982), 47 FR 41950 (September 23, 1982) (adopting Rule 134a under the Securities Act to permit the preparation and dissemination of certain educational materials concerning options and options trading without deeming such materials to be a prospectus).

[165] Whether a ''recommendation'' has taken place is not susceptible to a bright line definition, but turns on the facts and circumstances of the particular situation. *See* Securities Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42396, 42415 (July 18, 2011) (''Business Conduct Standards Proposal for Security-Based Swaps''). ''This is consistent with the FINRA approach to what constitutes a recommendation. In the context of the FINRA suitability standard, factors considered in determining whether a recommendation has taken place include whether the communication 'reasonably could be viewed as a 'call to action' ' and 'reasonably would influence an investor to trade a particular security or group of securities.' The more individually tailored the communication to a specific customer or a targeted group of customers about a security or group of securities, the greater the likelihood that the communication may be viewed as a 'recommendation.' '' Business Conduct Standards Proposal for Security-Based Swaps, 76 FR 42415, note 133 and accompanying text (citing FINRA Notice to Members 01–23 (March 19, 2001), and Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook, Securities Exchange Act Release No. 62718A (August 20, 2010), 75 FR 52562 (August 26, 2010)).

FINRA suitability guidance has long provided that the determination of whether a ''recommendation'' has been made is an objective rather subjective inquiry. *See* FINRA Notice to Members 01–23 (March 19, 2001). In guidance relating to FINRA rules 2090 and 2011, FINRA reiterated this prior guidance, stating that an important factor in this inquiry ''is whether—given its content, context and manner of presentation—a particular communication from a firm or associated person to a customer reasonably would be viewed as a suggestion that the customer take action or refrain from taking action regarding a security or investment strategy.'' *See* FINRA Regulatory Notice 11–02 (Know Your Customer and Suitability), January 2011, available at *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p122778.pdf.*

The MSRB has provided similar guidance for dealers in connection with MSRB Rule G–19. *See http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-19.aspx?tab=2.*

[166] *See supra* note 165. *See also Michael Frederick Siegel* v. *Securities and Exchange Commission,* 592 F.3d 147, 156 (D.C. Cir. 2010) (in sustaining the Commission's finding that Siegel, a broker, recommended an ''investment'' within the meaning of NASD rule 2310, the court held that the SEC properly considered the ''content, context and presentation'' of the communications and whether, as an ''objective matter,'' the communication could reasonably have been viewed as a ''call to action'' and reasonably would influence an investor to trade a particular security or group of securities).

[167] *See supra* note 165.

[168] *See supra* notes 162 and 165.

[169] 15 U.S.C. 78*o*–4(e)(8).

[170] *See infra* note 191 (defining 403(b) and 457 plans).

[171] *See* Proposal, 76 FR 835.

[172] *See* NABL Letter; letters from Hon. Kelly Schmidt, President, National Association of State

phrase ''any *other* issuer of municipal securities'' in Section 15B(e)(8)(C) would otherwise be unnecessary.[173] In connection with these comments, one commenter stated that the text and legislative history of the Dodd-Frank Act ''are devoid of any indication that its provisions addressing municipal securities were intended to grant the [Commission] general prudential authority over State and local fiscal matters.''[174] This commenter further stated that the ''Dodd-Frank Act references to municipal securities were intended to address securities (primarily municipal bonds) issued by 'municipal entities' to the class of nongovernmental investors that the [Commission] is charged with protecting.''[175] Another commenter, however, suggested that the definition, as proposed, should extend to public pension funds, LGIPs, other government asset pools, and investor-directed governmental plans only to the extent that they are political subdivisions of a state, or corporate instrumentalities of a state, that issue municipal securities in the public market.[176] This commenter also stated that LGIPs, tax-sheltered annuities, and deferred compensation plans should not be deemed to be municipal entities, because they do not issue securities in the public municipal securities market.[177] Finally, another commenter suggested that the definition of municipal entity should include obligated persons, because the definition includes issuers of municipal securities, and obligated persons can be issuers of municipal securities pursuant to other provisions of the federal securities laws.[178]

One commenter stated that, although Congress specifically referred to states, counties, cities, and other political subdivisions, Congress did not refer to their pension or retirement plans when it enacted Section 975 of the Dodd-Frank Act. This commenter further argued that governmental retirement plans are separate legal entities from the municipal entities and are not ordinarily funded by, or involved in, the types of transactions contemplated by Section 975 or the proposed rules.[179] Another commenter questioned whether a public retirement system would be a municipal entity, a municipal financial product, or both.[180]

Other commenters suggested that the definition of municipal entity should exclude public pension plans or participant-directed plans.[181] One commenter stated that these plans have nothing to do with raising funds for a municipal entity or investing proceeds from an offering of municipal securities.[182] This commenter also stated that once the funds are contributed to a governmental retirement plan, they are no longer the property or held for the benefit of the municipal entity that established the plan.[183] Further, this commenter stated that the definition of municipal entity should not include individual participants in a governmental retirement plan.[184]

One commenter stated that the Commission should clarify that municipal entity only includes entities that are controlled by, or established for the benefit and enjoyment of, a state or any of its constituent political subdivisions or municipal corporations.[185] This commenter noted that some public pension plans, ''sponsored or established'' by states or their political subdivisions or municipal corporations, are not controlled by the sponsoring governmental unit but are instead controlled by trustees with plenary authority.[186] This commenter also suggested that private pension funds, mutual funds, and insurance companies recognized under state law as such entities as a result of a filing with a state official and issuance of a certificate of formation should not be included within clause (B) of the definition of municipal entity as a ''plan, program or pool of assets sponsored or established by the State. . . .''[187]

Treasurers, dated February 16, 2011 (''National Association of State Treasurers Letter''); Gail Schubert, Chair, Alaska Retirement Management Board, dated February 18, 2011 (''Alaska Retirement Management Board Letter'').

[173] *See, e.g.,* NABL Letter; National Association of State Treasurers Letter; Alaska Retirement Management Board Letter.

[174] National Association of State Treasurers Letter. *See also* NABL Letter (stating that Section 975 was not intended to address advice to an entity based on a mere possibility that it would become an issuer of municipal securities in the public market place, and that it was not intended to address advice concerning a municipal entity's fiscal affairs generally, except to the extent that such affairs relate directly to its issuance or administration of municipal securities).

[175] National Association of State Treasurers Letter.

[176] *See* NABL Letter.

[177] *See id.*

[178] According to this commenter, ''municipal entity'' is defined under the Dodd-Frank Act to include ''any other issuer of municipal securities,'' and ''issuer of municipal securities'' is defined under Exchange Act Rule 15c2–12 to mean ''the governmental issuer specified in section 3(a)(29) of the Act and the issuer of any separate security.'' *See* letter from Chapman and Cutler, dated February 22, 2011 (''Chapman and Cutler Letter''). Further, this commenter stated that ''municipal securities'' is defined in the Exchange Act to include both governmental bonds and tax-exempt ''industrial development bonds.'' This commenter stated that, since the Commission has interpreted the term ''obligated person'' to have the same meaning as in Exchange Act Rule 15c2–12, conduit borrowers under tax exempt bond issues would be ''issuers of separate securities'' that are also ''issuers of municipal securities.'' As a result, the commenter suggested that obligated persons under tax-exempt bond issues are ''municipal entities.''

The Commission does not agree. Although the Commission believes that the definition of obligated person for purposes of municipal advisor registration should be consistent with the definition of obligated person for purposes of Rule 15c2–12, the Commission is not applying the definition of ''issuer of municipal securities'' in Rule 15c2–12 for purposes of interpreting the definition of ''municipal entity'' in Exchange Act Section 15B(e)(8). The Commission does not believe that the definition of ''municipal entity'' should be interpreted to include obligated persons, because the Dodd-Frank Act amended Exchange Act Section 15B to separately define ''municipal entity'' (15 U.S.C. 78*o*–4(e)(8)) and ''obligated person'' (15 U.S.C. 78*o*–4(e)(10)).

[179] *See* letter from Daniel J. Wintz, Fraser Stryker, dated February 21, 2011 (''Fraser Stryker Letter''). For example, this commenter stated that assets of plans qualified under Internal Revenue Code Section 401(a) must be held in trust for the benefit of employees and their beneficiaries, and qualified plan trusts maintained by governmental employers are prohibited from engaging in transactions such as self-dealing with the plan sponsor. The commenter also provided that 403(b) plans are typically funded with employee and employer contributions, which are used to purchase annuity contracts or are deposited in custodial accounts, the assets of which are invested in mutual funds. Finally, the commenter stated that 457 plans allow employees of political subdivisions to defer compensation. All amounts deferred under the plan, all property and rights purchased with the amounts, and all income attributable to such amounts, property, or rights, must be held in trust for the exclusive benefit of the participants and their beneficiaries. *See also* letter from Clifford E. Kirsch, Michael B. Koffler, and Susan S. Krawczyk, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, dated February 22, 2011 (''Committee of Annuity Insurers Letter I'').

[180] *See* letter from Richard K. Matta, Groom Law Group, on behalf of the State Board of Administration of Florida, dated February 28, 2011 (''State Board of Administration of Florida Letter''). This commenter expressed this concern, because it is unsure as to how the employee exclusion from the definition of municipal advisor would apply to public retirement systems.

[181] *See, e.g.,* Alaska Retirement Management Board Letter; Committee of Annuity Insurers Letter I; Fraser Stryker Letter.

[182] *See* Committee of Annuity Insurers Letter I. This commenter stated that, if the Commission were to modify the definition of ''municipal entity'' so it did not include 457 plans and 403(b) plans, its concerns regarding the impact of the proposed rules on separate accounts, broker-dealers and investment advisers for insurance contracts would be mooted. *See infra* notes 386 and 405 and accompanying text.

[183] *See* Committee of Annuity Insurers Letter I.

[184] *See id.* As such, this commenter asked the Commission to clarify that the municipal advisor registration regime does not apply to persons providing investment advice to individual plan participants or investment education provided to plan participants.

[185] *See* NABL Letter.

[186] *See id.*

[187] *See id.* The commenter expressed concern that the Commission's proposed interpretation that the definition of municipal entity includes ''participant-directed investment programs or pools'' could be interpreted to include private plans established by an entity chartered by a state.

The Commission has carefully evaluated comments received on its proposed definition of ''municipal entity'' and continues to believe that the definition of ''municipal entity'' should not be limited to issuers of municipal securities.[188] The Commission believes that the phrase ''any other issuer of municipal securities'' does not limit clauses (A) and (B) of the definition to entities that can issue municipal securities. Many of the plans, programs and pools of assets included in clause (B) of Section 15B(e)(8) do *not* issue municipal securities. Further, the definition of municipal entity does not otherwise limit itself to those entities that issue municipal securities. To limit the entities listed in clause (A) and (B) of Section 15B(e)(8) to issuers of municipal securities would also limit the definitions of ''municipal financial products'' (and therefore ''municipal derivatives'') and ''solicitation of a municipal entity'' to encompass only those entities that issue municipal securities. Under such a limited definition, advice with respect to municipal derivatives, for example, would not subject advisors to registration unless the municipal entity entering into a swap [189] was also an issuer of municipal securities. This limited definition would also allow third parties to solicit various public pension funds and LGIPs on behalf of brokers, dealers, investment advisers, and municipal advisors without registering as municipal advisors. The Commission believes that such entities should have the protections provided by municipal advisor registration.[190]

The Commission believes public employee retirement systems and public employee benefit plans or public pension plans (including participant-directed plans, 403(b), and 457 plans) [191] fall within the statutory definition of municipal entity. The Commission believes that each of these plans constitutes a ''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.'' [192]

Further, the Commission believes that such plans should be afforded the protection granted to municipal entities by the statute. The Commission notes that the solicitation of public pension plans [193] in connection with investment advisory services has been subject to multiple Commission enforcement actions. For example, in 2009, the Commission charged a former New York State official and top political advisor with allegedly defrauding the New York State Common Retirement Fund by causing the fund to invest billions of dollars with private equity funds and hedge fund managers who paid millions of dollars in the form of sham ''finder'' or ''placement agent'' fees.[194]

The Commission notes, however, that individual natural person participants in a public employee benefit plan do not fall within the definition of municipal entity, because such persons would not be a state, political subdivision of a state, or municipal corporate instrumentality. Similarly, private employee benefit plans, mutual funds, and insurance companies that are not sponsored or established by a state, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof, do not fall within the statutory definition of municipal entity.[195] Such funds and entities are not ''established or sponsored by'' a state merely because they file with a state official or are issued a certificate of formation by a state.

As noted above, three commenters [196] stated that funds contributed to a governmental plan are no longer the property of, or held for the benefit of or

[188] *See supra* notes 173–176 and accompanying text.

[189] Unless the context otherwise requires, for purposes of the discussion in this release, swap refers to swaps and security-based swaps.

[190] The Commission notes that Section 15B(b) of the Exchange Act, as amended by the Dodd-Frank Act, requires, among other things, that the MSRB adopt rules to effect the purposes of the Exchange Act with respect to, among other things, ''advice provided to or on behalf of municipal entities or obligated persons by . . . municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.'' *See* Section 15B(b)(2) of the Exchange Act. At a minimum, the rules of the MSRB, with respect to municipal advisors, must, among other things: ''(i) Prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients; (ii) provide continuing education requirements for municipal advisors; [and] (iii) provide professional standards.'' *See* Section 15B(b)(2)(L) of the Exchange Act.

[191] In this release, the Commission uses the term ''public employee benefit plan'' to refer to a ''pension plan'' that is a ''governmental plan'' (as such terms are described below). Such plans include ''participant-directed plans,'' ''403(b) plans,'' and ''457 plans'' (as such terms are described below), and may be plans, funds, or programs (also described below). The Commission also uses the term ''public employee retirement system.'' As described below, a public employee retirement system is a special purpose government, and therefore, a public employee pension plan or a public employee retirement system may itself be a municipal entity. The Commission uses the term ''private employee benefit plan'' to refer to a pension plan that is not a governmental plan.

The term ''governmental plan'' includes a plan established or maintained for its employees by the Government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. *See* Section 3(32) of ERISA, 29 U.S.C. 1002(32).

The term ''employee benefit plan'' or ''plan'' means an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan. *See* Section 3(3) of ERISA, 29 U.S.C. 1002(3).

The terms ''employee pension benefit plan'' and ''pension plan'' mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—(i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. *See* Section 3(2) of ERISA, 29 U.S.C. 1002(2).

Pursuant to the Governmental Accounting Standards Board (''GASB''), ''public employee retirement system'' means a special-purpose government that administers one or more pension plans. Public employee retirement systems also may administer other types of employee benefit plans, including postemployment healthcare plans and deferred compensation plans. *See* GASB Statement No. 28: Accounting and Financial Reporting for Pensions.

A ''participant-directed plan'' is a plan that provides for the allocation of investment responsibilities to participants or beneficiaries. *See* U.S. Department of Labor, Fact Sheet: Final Rule to Improve Transparency of Fees and Expenses to Workers in 401(k)–Type Retirement Plans (February 2012), available at *http://www.dol.gov/ebsa/pdf/fsparticipantfeerule.pdf.*

A ''403(b) plan'' is a tax-sheltered retirement plan, similar to a 401(k) plan, offered by public schools and certain 501(c)(3) tax-exempt organizations. *See* Internal Revenue Service, IRC 403(b) Tax-Sheltered Annuity Plans, available at *http://www.irs.gov/Retirement-Plans/IRC-403(b)-Tax-Sheltered-Annuity-Plans.*

A ''457 plan'' is a deferred compensation plan as described in IRC section 457, which is available for certain state and local governments and non-governmental entities tax exempt under IRC section 501. *See* Internal Revenue Service, IRC 457(b) Deferred Compensation Plans, available at *http://www.irs.gov/retirement/article/0,,id=172437,00.html.*

[192] 15 U.S.C. 78*o*–4(e)(8) (defining ''municipal entity'').

[193] *See infra* Section III.A.1.b.x. (discussing ''solicitation of a municipal entity or obligated person'').

[194] *See SEC* v. *Henry Morris,* Litigation Release No. 20963 (March 19, 2009).

As another example, the Commission charged the former CEO of the California Public Employees' Retirement System and his close personal friend with allegedly scheming to defraud an investment firm into paying $20 million in fees to the friend's placement agent firms. *See* SEC Charges Former CalPERS CEO and Friend With Falsifying Letters in $20 Million Placement Agent Fee Scheme, available at *http://www.sec.gov/news/press/2012/2012-73.htm.*

[195] *See supra* note 187 and accompanying text.

[196] *See* Fraser Stryker Letter and Committee of Annuity Insurers Letter I. *See also* NABL Letter (making a similar argument that the term ''municipal entity'' should only include entities that are controlled by or established for the benefit and enjoyment of a state or any of its political subdivisions or municipal corporations).

controlled by, the municipal entity that established the plan, and that such plans are not ordinarily funded by or involved in the types of transactions contemplated by Congress. These commenters argued that, as a result, these plans should be excluded from the definition of municipal entity. The Commission does not agree. Such a plan is ''sponsored or established'' by the municipal entity and, therefore, falls within the statutory definition of municipal entity.

One commenter suggested that the phrase ''any State, political subdivision of a State, or municipal corporate instrumentality of a State'' in the interpretation of the definition of ''municipal entity'' would be clearer if it were revised to read ''any State, political subdivision of a State, or municipal corporate instrumentality of a State *or of a political subdivision of a State*.'' [197] The commenter noted, for example, that a charter school may be organized as an ''instrumentality of a political subdivision of a State.''

Because states delegate powers to their political subdivisions and one of the powers that may be delegated to political subdivisions is the ability of political subdivisions to create corporate instrumentalities,[198] the Commission believes that a municipal entity organized as a municipal corporate instrumentality of a political subdivision of a state is properly considered a municipal corporate instrumentality of a state. Accordingly, the Commission is adopting Rule 15Ba1–1(g) to reflect such interpretation and define municipal entity to include municipal corporate instrumentalities of political subdivisions of states.[199]

iii. 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.'' [200] In the Proposal, in response to a commenter's request for clarification,[201] the Commission stated its belief that the definition of obligated person for purposes of the definition of municipal advisor should be consistent with the definition of obligated person for purposes of Rule 15c2–12.[202] The Commission therefore proposed to exempt from the definition of obligated person providers of municipal bond insurance, letters of credit, or other liquidity facilities.[203] In the Proposal, the Commission stated its belief that this interpretation would 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, including uniformity relating to the definition of obligated persons.[204] The Commission noted that providers of municipal bond insurance, letters of credit, or other liquidity facilities are generally non-governmental providers of credit enhancements.[205] As providers of credit enhancements, these entities are not borrowing funds through a municipal entity. Therefore, the Commission stated in the Proposal its belief that they do not require the type of protection that should be provided to those who, in municipal securities transactions, borrow funds through municipal entities.

The Commission received approximately ten comment letters with regard to the definition of ''obligated person'' and the application of the proposed rules to such persons.

Definition of ''Obligated Person''

Generally, most commenters agreed that the definition of ''obligated person'' should be consistent with the definition of that term in Rule 15c2–12,[206] or otherwise expressed support for the proposed definition of obligated person.[207] Consequently, the Commission is adopting the definition substantially as proposed, but with modifications for general consistency with the application of the term in Rule 15c2–12 [208] and certain clarifying modifications to address concerns raised by commenters. Specifically, Rule 15Ba1–1(k) provides that obligated person ''has the same meaning as in section 15B(e)(10) of the Act (15 U.S.C. 78*o*–4(e)(10)); *provided, however,* the term *obligated person* shall not include: (1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities; (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or (3) the federal government.''

The Commission believes that there is no reason to differentiate the definition of obligated person for purposes of municipal advisor registration from the definition of obligated person for other Exchange Act purposes. As discussed in the Proposal and herein, the Commission believes that such definition will provide further protections for certain entities that participate in borrowings in, and help ensure uniformity among rules relating to, the municipal securities market. The continued use of a consistent definition will also provide clearer guidance to market participants.

Although most commenters supported the proposed definition, some commenters asked for clarification. One commenter suggested that the definition should exclude persons who might otherwise be deemed to be an obligated person solely on the basis of a commitment to support payment of the underlying assets that secure such issue, other than a borrower, lessee, or installment purchaser who is contractually responsible for payments that exceed a specified and substantial materiality standard, or a guarantor of

[197] NABL Letter.

[198] *See, e.g.,* MCL 117.4o: *http://www.legislature.mi.gov/(S(p3jhrzzb5hbiew45wy2fmz45))/mileg.aspx?page=getobject&objectname=mcl-117-4o* (authorizing cities in the state of Michigan to form nonprofit corporations under that state's nonprofit corporation act if they are organized for valid public purposes).

[199] *See* Rule 15Ba1–1(g), which defines municipal entity to mean ''any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including: (1) [A]ny agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (2) [a]ny 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 (3) [a]ny other issuer of municipal securities.''

[200] 15 U.S.C. 78*o*–4(e)(10). Obligated persons can include entities acting as conduit borrowers, such as private universities, non-profit hospitals, and private corporations.

[201] *See* Proposal, 76 FR 829, note 88 and accompanying text.

[202] 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).'' *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). *See also* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994).

[203] *See* proposed Rule 15Ba1–1(i) and 17 CFR 240.15c2–12(f)(10).

[204] *See* Proposal, 76 FR 830.

[205] *See id.*

[206] *See, e.g.,* Kutak Rock Letter; NABL Letter. *See also* ABA Letter; BNY Letter.

[207] *See* letter from Michael G. Bartolotta, Chairman, MSRB, dated February 22, 2011 (''MSRB Letter I'').

[208] *See* Rule 15Ba1–1(k). *See also* supra note 202.

such a payment obligation, who is not otherwise excluded from the definition of obligated person.[209] One commenter specifically stated that guaranty agencies for loans under the Federal Family Education Loan Program (''FFELP'') should not be deemed obligated persons.[210] Another commenter stated that companies registered under the Exchange Act, the federal government and its instrumentalities, foreign governments and their instrumentalities, religious organizations, and entities already subject to substantial oversight and regulation, such as banks, credit unions, regulated investment companies, and insurance companies, should be exempt from the definition of obligated person.[211]

The Commission has carefully considered these comments. The Commission continues to believe that there is no reason to differentiate the definition of obligated person for purposes of municipal advisor registration from the definition of obligated person for purposes of Rule 15c2–12. The Commission, however, is modifying the rule text of Rule 15Ba1–1(k) to clarify that the definition of obligated person excludes persons whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement.

The continuing disclosure requirements of Rule 15c2–12 exclude certain obligated persons whose financial information or operating data is not material to the issuance of municipal securities.[212] Therefore, consistent with Rule 15c2–12, the Commission is clarifying that an entity whose financial information or operating data is not material to an issuance of municipal securities would not be an obligated person under Rule 15Ba1–1(k). Any advisor to such entity would not be required to register as a municipal advisor, because such person would not be a municipal advisor within the meaning of Rule 15Ba1–1(d).[213] In addition to promoting consistency, the Commission believes that the materiality standard for secondary market disclosure in Rule 15c2–12 also serves as an appropriate standard to identify those obligated persons that should have the protections afforded by Section 15B of the Exchange Act. Using a similar approach ensures uniformity, provides municipal market participants with existing guidance about how the rules should be applied, and limits the application of the definition to only those persons whose financial information or operating data is material to a municipal securities offering and for whom registration provides significant benefits to the municipal marketplace.

While the definition of obligated person in the Proposal excluded only providers of municipal bond insurance, letters of credit, or other liquidity facilities, the Commission understands that credit enhancement for municipal securities is not necessarily limited to those three categories and that many municipal securities may be credit enhanced indirectly. Prior guidance from Commission staff provides that ''[e]ntities that insure or guarantee performance of assets that have been pledged to secure the repayment of the municipal obligation may fall within the definition of 'obligated person' . . . unless such insurance or guarantee has been obtained prior to and not in contemplation of any offering of municipal securities, the insurance or guarantee relates only to the individual pledged assets, and the insurance or guarantee exists independent of the existence of a municipal obligation.''[214] Consistent with this prior guidance from Commission staff, the Commission is adopting a definition of ''obligated person'' for purposes of Rule 15Ba1–1(k), which provides that the ultimate determination as to whether an insurer or guarantor is an obligated person under Rule 15c2–12 depends on the relationship to the financing itself, which is a factual analysis.[215] Similarly, a determination of whether a guarantor or insurer falls within the exclusion from the definition of obligated person for the purposes of the municipal advisor registration regime also depends on the particular facts and circumstances.[216]

In addition, the Commission notes that although the federal government and its instrumentalities, as providers of credit enhancement, could fall within the definition of obligated person under Rule 15c2–12, the federal government does not require the type of protection that should be applicable generally to those who borrow funds through municipal entities in municipal securities transactions.[217] Accordingly, for purposes of the municipal advisor registration regime, the Commission is interpreting the definition of obligated person to exclude the federal government. Therefore, advisors to the federal government and its instrumentalities providing credit enhancements in connection with issuances of municipal securities are not required to register as municipal advisors.

Another commenter stated that buyers of municipal securities rely on the letter of credit and the credit rating of the lender issuing the bonds rather than the ''ultimate borrower,'' and the security or collateral provided by a borrower goes to the lender or letter of credit issuer,

[209] *See* NABL Letter. The commenter stated that the interpretive guidance with respect to Rule 15c2–12 leaves open the possibility that some persons who are not directly committed to support payment of a municipal securities issue may nonetheless be deemed to be obligated persons by reason of their commitment to support payment of the underlying assets securing the issue, based upon a factual analysis of their relationship to the issue. *See id. See also* letter from Brett E. Lief, President, National Council of Higher Education Loan Programs, dated February 16, 2011 (''National Council of Higher Education Loan Programs Letter''). Another commenter stated that, according to the proposed rules, while some of its members would fall within the definition of obligated person in each of its capital market financings, under the materiality standard of Rule 15c2–12 under the Exchange Act, the commenter only designates as obligated persons those members participating in the projects being financed that have a significant percentage of the financial obligation that supports the debt service on the commenter's bonds. *See* letter from Robert W. Trippe, Senior Vice President and Chief Financial Officer, American Municipal Power, Inc., dated February 21, 2011 (''American Municipal Power Letter'').

[210] *See* National Council of Higher Education Loan Programs Letter.

[211] *See* Kutak Rock Letter.

[212] For example, Rule 15c2–12 requires a written agreement or contract to provide ongoing information (1) with respect to any obligated person for whom financial information or operating data is presented in the final official statement or (2) for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that in the case of pooled obligations the undertaking shall specify such objective criteria. *See* Rule 15c2–12(b)(5)(i)(A). The issuer and the other participants determine at the time of preparation of the official statement which obligated persons are material to the offering. *See* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590, 59596 (November 17, 1994).

[213] A person advising a guarantor that is a municipal entity (such as a state credit enhancer) must separately determine whether its advice to that municipal entity would trigger the municipal advisor registration requirement.

[214] Response to Question 9 in letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission to John S. Overdorff, Chair, Securities Law and Disclosure Committee, NABL, dated September 19, 1995.

[215] *See id.*

[216] *See id.*

[217] The federal government, as a credit enhancer, would not be borrowing any funds through a municipal entity, and would therefore be in a position similar to that of providers of municipal bond insurance, letters of credit, or other liquidity facilities that are excluded from the definition of ''obligated person'' in Rule 15c2–12. In addition—unlike for the definition of special entity—Congress did not include the federal government in the definition of municipal entity. *See infra* note 275 (noting differences in the two definitions).

not bondholders.[218] The commenter stated that the real borrower-lender relationship is between the borrower and the bank issuing the letter of credit.[219] This commenter noted that these and other factors distance conduit borrowers [220] from direct obligations to bondholders, but they nonetheless would be obligated persons under the Proposal.

The Commission understands this commenter to be suggesting that such conduit borrowers should not be considered obligated persons, such that their advisors would not have to register as municipal advisors. The Commission, however, has taken the position that, regardless of whether an obligated person obtains a letter of credit from a bank to guarantee the payment of municipal securities, an obligated person has an obligation to investors.[221] The Commission has long been of the view that the presence of credit enhancements generally would not be a substitute for material disclosure concerning the primary obligor on municipal bonds.[222] Thus, an advisor to an obligated person that has obtained a letter of credit from a bank to guarantee the payment of municipal securities should not be treated differently from an advisor to an obligated person that has not obtained such credit enhancements, and would therefore have to register as a municipal advisor.[223]

Application of Rules to Advisors to Obligated Persons

One commenter suggested generally that the proposed rules should be more strictly applied to advisors dealing with municipal entities than to advisors dealing with obligated persons. The commenter asserted that there is less public interest in regulating advice to private entities, and such regulation is better handled outside of municipal markets regulation.[224] As stated above, obligated persons assume the same role as municipal entities in an issuance of municipal securities, because obligated persons are committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities. Further, defaults by private entity obligated persons with respect to municipal securities can have negative consequences for municipal entities.[225] Section 15B of Exchange Act (as amended by the Dodd-Frank Act), moreover, provides for the protection of both municipal entities and obligated persons.[226] Accordingly, the Commission believes that the municipal advisor registration regime should generally apply in the same manner to advisors of obligated persons as to advisors of municipal entities.[227]

As described more fully below, however, the Commission is providing an exemption from the definition of municipal advisor for persons providing advice with respect to certain ''investment strategies,'' which will narrow the range of activities that would cause an advisor to an obligated person to meet the definition of municipal advisor.[228] Also as described more fully below, the Commission is limiting the scope of its definition of the term ''municipal derivative'' and its interpretation of the term ''solicitation of a municipal entity or obligated person'' as each applies to obligated persons, such that an obligated person must be acting in its capacity as such and the relevant activity is in connection with municipal securities (or, in the case of a solicitation, municipal financial products).[229]

When does a person become an obligated person?

One commenter asked when a client would become an obligated person.[230] Specifically, the commenter asked whether it would be rendering advice as a municipal advisor if it was engaged to consider a client's options regarding conventional versus conduit financing, but the client subsequently chose not to engage in conduit financing.[231] In addition, the commenter asked whether only registered municipal advisors can solicit clients that are eligible to use conduit financing.[232] Lastly, the same commenter asked whether a financial advisor would be required to register as a municipal advisor if a client is examining its debt alternatives, among which is conduit financing.[233]

Whether a financial advisor that advises clients about conduit financing or other financing options would be required to register as a municipal advisor would depend on the facts and circumstances. A person will not be a municipal advisor to an obligated person until the obligated person has begun the process of applying to, or negotiating with, a municipal entity to issue conduit bonds on behalf of the obligated person. Activity that never results in solicitation of or actual contact with a municipal entity does not have a sufficient nexus to municipal financial products or the issuance of municipal securities to require registration as municipal advisor. Merely advising a client on debt financing alternatives that include conduit financing is not a municipal advisory activity, because the client would not be sufficiently close to being an obligated person with respect to an issuance of municipal securities.[234] If a

[218] *See* letter from Andrew S. Rose, dated April 10, 2011 (''Rose Letter'').

[219] *See id.*

[220] Many commenters used the term ''conduit borrower'' in their letters. Although the term ''conduit borrower'' and ''obligated person'' do not have identical meanings, for purposes of this release, the Commission is treating the comments regarding ''conduit borrowers'' as applying to ''obligated persons.''

[221] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, note 89 (July 10, 1989). *See also* Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33107 (June 10, 2010) (stating: ''As noted in [Securities Exchange Act Release No. 60332 (July 17, 2009), 74 FR 36831 (July 24, 2009)], the Commission believes that information regarding conduit borrowers is material to investors in credit enhanced offerings and therefore should be included in the official statements'').

[222] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, 28812 (July 10, 1989).

[223] The text of Rule 15Ba1–1(k) has also been clarified to provide that the definition of obligated person excludes persons whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement.

[224] *See* letter from Kendra York, Public Finance Director, State of Indiana, dated February 22, 2011 (''State of Indiana Letter''). This commenter stated that it is unrealistic to expect board members, attorneys, and accountants of obligated persons to be aware that their activities would be subject to Commission regulation. The commenter stated that it seems more appropriate to regulate improvident and risky usage of derivatives by unsophisticated borrowers by focusing on suitability rules applicable to the providers of these services, rather than focusing on their use in the municipal market.

[225] According to a Standard and Poor's study of municipal bond defaults in the 1990s, bonds for the three major types of conduit bond issues (healthcare, multi-family housing, and industrial development) accounted for more than 70% of defaulted principal. More recent reports have also indicated that non-governmental conduit borrowers account for more than 70% of municipal bond defaults. For example, a 2011 report stated that the largest share of modern era defaults consists of industrial development revenue bonds, followed by bonds supporting healthcare and housing. The report states that these three sectors accounted for 67% of all defaulting issues during the period of 1980 to 2011. *See* 2012 Report on the Municipal Securities Market, *supra* note 45, at 24.

[226] *See* 15 U.S.C. 78*o*–4(b)(2)(C).

[227] The Commission notes, however, that the Exchange Act, as amended by the Dodd-Frank Act, imposes a fiduciary duty on municipal advisors when advising municipal entities. *See* 15 U.S.C. 78*o*–4(c)(1). The statute does not impose a fiduciary duty with respect to advice to obligated persons. *See also supra* note 100.

[228] *See infra* Section III.A.1.b.viii.

[229] *See infra* note 236 and accompanying text.

[230] *See* letter from Jonathan Roberts, Principal, Roberts Consulting, LLC, dated February 18, 2011 (''Roberts Consulting Letter'').

[231] *See id.*

[232] *See id.*

[233] *See id.*

[234] Conversely, providing advice to a client who is a municipal entity regarding debt financing alternatives would constitute a municipal advisory activity.

client is only considering conduit financing, the client is not an obligated person. However, if the client applies to, or negotiates with, the municipal entity to issue conduit bonds, the person advising the conduit borrower would be required to be registered as a municipal advisor, regardless of whether or not the financing successfully closes.

One commenter argued that a person that is an obligated person does not remain an obligated person indefinitely and is not an obligated person with respect to unrelated matters.[235] The Commission agrees and has limited the scope of the rules as applied to advice concerning municipal financial products used by, and third-party solicitations of, obligated persons as described herein.[236]

The same commenter also argued that a person should not be deemed an obligated person if it is not the initial obligor, but rather comes to support the payment of obligations on municipal securities after the offering, through an assumption or other arrangement, and asked the Commission to clarify that any relationship between an obligated person and its advisor will only be considered a municipal advisory relationship to the extent that it directly involves a transaction in which the person is an obligated person.[237] The Commission does not agree. It is the Commission's view that such a person would be an obligated person if the municipal securities remain outstanding after the substitution of the obligated person, and such a person is an obligated person for purposes of Rule 15c2–12. The obligated person's responsibilities and need for protection would be similar regardless of whether it was an initial obligor or a subsequent obligor. The Commission notes that, as discussed, a person is only a municipal advisor to an obligated person if it provides advice to, or on behalf of, the 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 that meets the definition for ''solicitation'' of such obligated person.[238] The Commission also notes that Exchange Act Section 15B(e)(10) defines obligated person to mean, among other things, ''any person . . . 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.'' [239]

Charter Schools

In the Proposal, the Commission noted that a charter school would generally fall under the definition of municipal entity, but may, in certain circumstances, fall under the definition of obligated person.[240] With respect to municipal financial products or the issuance of municipal securities, the Commission asked in what circumstances should charter schools be considered municipal entities or obligated persons.[241] Further, the Commission asked how the treatment of charter schools under different state laws affects their classification as municipal entities or obligated persons.[242]

One commenter stated that charter schools that have bonds issued on their behalf by a local financing governmental entity are classic examples of obligated persons.[243] This commenter suggested that, if a charter school receives tax money from a state or school district, the school should be treated as a municipal entity.[244] Otherwise, the school should be treated as an obligated person.[245] Another commenter stated that a charter school should be considered a municipal entity if it is organized as a political subdivision of a state or an instrumentality of a political subdivision of a state.[246] This commenter stated that, in other circumstances when providing for payment of municipal securities, a charter school should be considered an obligated person.[247]

As stated in the Proposal, the Commission continues to believe that charter schools are generally municipal entities, because they are public schools and derive their charter from a political subdivision of a state. While charter schools generally receive a portion of their funds from the state, they may also raise funds through conduit borrowing, and may pledge funds other than state money for the payment on the conduit borrowing. Thus, a charter school is an obligated person under Section 15B(e)(10) and Rule 15Ba1–1(k) when it engages in conduit borrowing using and/or pledging solely monies derived from sources other than the state or political subdivision of a state.[248] A municipal entity that is an obligated person on bonds issued by another municipal entity is still a municipal entity for purposes of this rule, and advisors to such municipal entities are subject to a statutory fiduciary duty.[249]

iv. Municipal Financial Products

Exchange Act Section 15B(e)(5) defines ''municipal financial product'' to mean ''municipal derivatives, guaranteed investment contracts, and investment strategies.'' [250] The Commission proposed to incorporate into the rule the statutory definition of municipal financial product.[251] The Commission received approximately ten comment letters regarding the proposed definition. The issues raised by these commenters are discussed below in the ''Municipal Derivatives,'' ''Guaranteed Investment Contracts,'' and ''Investment Strategies'' sections. The Commission is adopting the definition of ''municipal financial product'' as proposed.[252]

[235] *See* SIFMA Letter I.

[236] *See infra* Section III.A.1.b.v. (discussing the definition of ''municipal derivatives'' and its scope with respect to obligated persons) and Section III.A.1.b.x. (discussing the definition of ''solicitation of a municipal entity or obligated person'' and its scope with respect to obligated persons).

[237] *See* SIFMA Letter I. Further, another commenter stated that if an entity related to a borrower agrees to guarantee, or be jointly obligated, on a borrowing, it should be treated as the primary borrower and not as a municipal advisor. *See* letter from Kasey Kesselring, President, South Lake County Hospital District, dated February 16, 2011 (''South Lake County Hospital Letter''). The Commission notes that such an entity is not acting as an advisor to its affiliated borrower merely by agreeing to guarantee or be jointly obligated on a borrowing.

[238] *See* 15 U.S.C. 78*o*–4(e)(4).

[239] *See* 15 U.S.C. 78*o*–4(e)(10).

[240] 15 U.S.C. 78*o*–4(e)(8). *See also infra* note 241.

[241] *See* Proposal, 76 FR 835.

In the Proposal, the Commission clarified, in response to a commenter, that 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, community colleges, or state boards of education) and, therefore, would fall under the definition of municipal entity. *See id.,* at 829, notes 83–85 and accompanying text.

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. 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. *See id.,* at 829, note 85.

[242] *See id.,* at 835.

[243] *See* Kutak Rock Letter.

[244] *See id.*

[245] *See id.*

[246] *See* NABL Letter.

[247] *See id.*

[248] *See also supra* note 241 and accompanying text (recognizing that a charter school may be an obligated person).

[249] *See* 15 U.S.C. 78*o*–4(c).

[250] 15 U.S.C. 78*o*–4(e)(5).

[251] *See* proposed Rule 15Ba1–1(g) (providing that ''municipal financial product'' has the same meaning as in Section 15B(e)(5) of the Exchange Act).

[252] *See* Rule 15Ba1–1(i).

v. Municipal Derivatives

As discussed in the Proposal, Exchange Act Section 15B does not define the term ''municipal derivatives.'' Accordingly, the Commission proposed Rule 15Ba1–1(f) to define the term to mean any swap [253] or security-based swap [254] 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.[255] Thus, as stated in the Proposal, the Commission included in the definition of municipal derivatives the definitions of ''swap'' and ''security-based swap,'' as those terms are defined by statute (and any rules and regulations thereunder). In the Proposal, the Commission asked whether the proposed definition of municipal derivatives should be modified or clarified in any way.[256]

One commenter stated that the proposed definition of municipal derivatives is too broad, because it encompasses too many types of advisory entities and transactions and the definition goes beyond securities.[257] The commenter expressed concern that a person must register as a municipal advisor regardless of the type of swap advice contemplated or the relationship between the municipal entity and the person seeking to offer the advice.[258]

Another commenter stated that there is no statutory basis or legislative history for the proposed expansion of the industry's common usage of the term ''municipal derivatives,'' which is limited to derivatives of a municipal security.[259] The commenter stated that the proposed definition would mean that any public plan (if not exempted from the definition of municipal entity) using swaps in the management of its overall portfolio would be dealing in municipal financial products, merely by virtue of being a counterparty to the swap.[260]

Additionally, one commenter stated that many municipal entities enter into commodity hedging transactions in connection with their operations to avoid mid-year operating budget disruptions and rate hikes. Accordingly, this commenter asked the Commission to confirm that hedging transactions by municipal entities related to their operations (rather than municipal securities) do not constitute municipal derivatives.[261]

One commenter asked the Commission to clarify how a person engaging in a transaction or assignment with respect to a municipal derivative would determine that the person it is advising is ''an obligated person, acting in its capacity as an obligated person.'' [262] The commenter stated that the Commission should clarify that a person (presumably acting as a dealer or counterparty) must have actual knowledge that the counterparty is an obligated person acting as such and have actual knowledge that the municipal derivative implicates or is related to the underlying transactions or funds that make such person an obligated person.[263] Further, the commenter stated that a person should not need to affirmatively inquire as to the counterparty's or the funds' status.[264]

Another commenter suggested narrowing the definition of municipal derivatives to only include debt-related derivatives entered into (a) by a municipal entity in connection with an issue of municipal securities or (b) by an obligated person as a pledged security or a source of payment for municipal securities.[265] This commenter also stated that the phrase ''in its capacity as an obligated person'' is not sufficiently tailored, because it would include any derivative entered into by the obligated person to hedge a conduit borrowing, not merely those that ''by contract or other arrangement . . . support the payment'' of municipal securities.[266] In addition, this commenter stated that, given the use of the term ''*municipal* financial product,'' Congress did not intend to regulate transactions with non-municipal entities that do not affect municipal entities or investors, simply because they result from a municipal securities transaction.[267]

In contrast, one commenter agreed with the Commission that municipal derivatives includes both swaps and security-based swaps to which a municipal entity or obligated person is a counterparty, but stated that this definition is too narrow.[268] This commenter stated that, because the term ''municipal derivatives'' (rather than the term ''swap'') was used in the definition of municipal financial products, Congress intended to ''provide flexibility to address problems that may arise in the future in connection with the use of other existing or yet-to-be-developed forms of derivatives by municipal entities.'' [269]

The Commission has carefully considered these comments and is adopting the definition of municipal derivatives substantially as proposed. The Commission, however, is clarifying herein the scope of application of the definition to obligated persons, in response to issues raised by commenters.[270] Specifically, the Commission is adopting Rule 15Ba1–1(f), which now provides 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 Act (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 Act (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which: (1) [a] Municipal entity is a counterparty; or (2) [a]n obligated person, acting in such capacity, is a counterparty.'' [271]

[253] As proposed and adopted, the definition specifies that ''swap'' is as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Exchange Act (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder.

[254] As proposed and adopted, the definition specifies that ''security-based swap'' is as defined in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder.

[255] *See* proposed Rule 15Ba1–1(f).

[256] *See* Proposal, 76 FR 836.

[257] *See* David J. Tudor, President and CEO, ACES Power Marketing LLC, dated March 2, 2011 (''ACES Power Marketing Letter'').

[258] *See id.*

[259] *See* letter from Robert V. Newman, Executive Director, Utah Retirement Systems, dated February 22, 2011 (''Utah Retirement System Letter'').

[260] *See id.*

[261] *See* NABL Letter.

[262] *See* SIFMA Letter I.

[263] *See id.*

[264] *See id.*

[265] *See* NABL Letter. This commenter stated that by narrowing the definition of municipal derivatives accordingly, ''swaps that are entered into by a municipal entity to hedge the interest rate on variable rate securities, or to hedge the value of municipal securities to be issued in the future, as well as swaps that are part of a structured municipal securities financing (*e.g.,* a structured student loan or mortgage revenue bond issue) would be covered, but derivatives that are unrelated to municipal securities issues (*e.g.,* swaps to hedge bank loans or fuel costs) or are entered into by a conduit borrower and [not] pledged as security or a source of payment for, the municipal securities issue would be excluded.''

[266] *See id.*

[267] *See id.*

[268] *See* MSRB Letter I.

[269] *See id. See also infra* note 271 (discussion of the definition of swap and security-based swap, which includes flexibility to address yet-to-be developed forms of derivatives).

The Commission also notes that on July 18, 2012, it adopted rules jointly with the CFTC to, among other things, further define the terms swap, security-based swap, and security-based swap agreement. *See* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (August 13, 2012) (Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping).

[270] *See* Rule 15Ba1–1(f).

[271] *See id.* The Commission notes that the definitions of swap and security-based swap are quite broad and that Section 712(d) of the Dodd-Frank Act gives the Commission and CFTC joint

Continued

As proposed and adopted, with respect to municipal entities, the Commission has determined not to qualify the definition of municipal derivatives as being limited to those entered into in connection with, or pledged as security or a source of payment for, existing or contemplated municipal securities. Municipal entities seeking advice with respect to municipal derivative transactions (including commodity hedging transactions in connection with their operations, which fall within the definition of municipal derivatives) are subject to risks, regardless of whether the municipal derivatives are entered into in connection with or pledged as security or a source of payment for existing or contemplated municipal securities, and should have the protections provided by municipal advisor registration.[272]

As proposed and adopted, with respect to obligated persons, the coverage of the registration requirement is limited to advice relating to derivatives entered into by an obligated person in its capacity as an obligated person with respect to municipal securities. Thus, with respect to obligated persons, municipal derivatives include those derivatives entered into by obligated persons in connection with, or pledged as security or a source of payment for, existing municipal securities or municipal securities to be issued in the future.[273] By contrast, advice with respect to other types of derivative transactions entered into by obligated persons outside of their capacity as obligated persons will not trigger the municipal advisor registration requirement. For example, a person advising a nonprofit hospital to hedge an interest rate swap entered into in connection with a variable rate conduit borrowing (by such hospital) would be a municipal advisor. However, a person would not be required to register as a municipal advisor if it is advising an airline company that is an obligated person with respect to airport revenue bonds about whether the airline company should hedge its exposure on aviation fuel costs with a derivatives transaction that is unrelated to any particular issuance of municipal securities and that is outside of its capacity as an obligated person. The Commission believes that this clarification with respect to obligated persons addresses the concerns of commenters regarding scope of the advisors' responsibilities to conduit borrowers and the ability to identify situations where advising obligated persons triggers a registration requirement.

The Commission notes that the Exchange Act and the Commodity Exchange Act, as amended by the Dodd-Frank Act, provide heightened protection to special entities, in connection with swaps and security-based swaps. The Commission interprets the term special entity to generally include municipal entities, because the definition of municipal entity is substantially similar to the definition of special entity in the Exchange Act and the Commodity Exchange Act.[274] The heightened protection afforded by the Acts to special entities applies to all swaps and security-based swaps, irrespective of whether the swaps and security-based swaps are entered into in connection with or pledged as security or a source of payment for existing or contemplated securities.[275] Accordingly, the Commission's determination not to qualify its interpretation of the term ''municipal derivatives'' with respect to municipal entities is designed to provide a level of protection to such entities with respect to swaps and security-based swaps that is consistent with the protection afforded to special entities and the Commission's interpretation of that term with respect to obligated persons is intended to reflect the scope of the role of obligated persons with respect to municipal securities.

authority to further define such terms. Under the Commodity Exchange Act, as amended by the Dodd-Frank Act, the term ''swap'' is defined to mean, in part, any agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap. *See* 7 U.S.C. 1a(47). In addition, under the Exchange Act, as amended by the Dodd-Frank Act, the term ''security-based swap'' incorporates the definition of ''swap'' under the Commodity Exchange Act. *See* 15 U.S.C. 78c(a)(68).

[272] *See supra* note 190 and accompanying text.

[273] The Commission believes it is appropriate to refer to ''existing or contemplated'' municipal securities because an obligated person could enter into a swap or security-based swap before or after an issuance of municipal securities (*e.g.,* a forward-starting interest rate swap as part of a synthetic advanced refunding). *See also supra* note 265 (discussing the comment in the NABL Letter that the definition of municipal derivatives should be narrowed in a way that would still cover, among other things, swaps entered into to hedge the value of municipal securities to be issued in the future).

[274] The Commission notes that there are some differences between the statutory definitions of municipal entity and special entity. In particular, the statutory definitions of special entity do not explicitly include authorities, instrumentalities or corporate instrumentalities of a state. The definition of municipal entity includes plans, programs, or pools of assets established by a state, political subdivision, or municipal corporate instrumentality (or any agency, authority, or instrumentality thereof), and therefore includes 529 Savings Plans and LGIPs, while the statutory definitions of special entity do not explicitly include such entities. Also, the statutory definitions of special entity include governmental plans as defined by ERISA. The Commission notes that the CFTC, in adopting rules to implement business conduct standards for swap dealers, included in the definition of ''special entity'' (for purposes of Commodity Exchange Act Section 4s): ''A State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or a corporation of or established by a State or political subdivision of a State.'' *See* Standards for Swap Dealers and Major Swap Participants with Counterparties (January 11, 2012), 77 FR 9734 (February 17, 2012) (adopting rules proposed by the CFTC prescribing external business conduct standards for swap dealers and major swap participants) (''Business Conduct Standards for Swaps'').

The CFTC's final rules state that all State and municipal special entities are municipal entities. *See* Business Conduct Standards for Swaps, 77 FR 9739.

[275] As discussed herein, with Title IX of the Dodd-Frank Act, Congress provided certain protections for municipal entities and obligated persons with respect to their interaction with certain advisors, including persons providing advice with respect to, among other things, municipal derivatives.

Moreover, with Section 764 of Title VII of the Dodd-Frank Act, by adding new Section 15F to the Exchange Act, Congress provided certain protections for special entities with respect to their interaction with security-based swap dealers and major security-based swap participants. *See* Pub. L. 111–203, 124 Stat. 1376, 1789–1792, section 764(a) (adding Exchange Act Section 15F).

Among other things, Section 15F(h)(4) of the Exchange Act establishes that a security-based swap dealer that ''acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity'' and ''shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination'' that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity . . . .'' Section 15F(h)(5) requires that security-based swap entities that offer to, or enter into a security-based swap with, a special entity comply with any duty established by the Commission that requires a security-based swap entity to have a ''reasonable basis'' for believing that the special entity has an ''independent representative'' that meets certain criteria and undertakes a duty to act in the ''best interests'' of the special entity. *See* Pub. L. 111–203, 124 Stat. 1376, 1791 (to be codified at 15 U.S.C. 78*o*–10(h)(5)). This provision is intended to operate together with the municipal advisor regulatory scheme, which would apply to such an ''independent representative'' unless the representative is an employee of the municipal entity. Similarly, Section 731 of the Dodd-Frank Act amends the Commodity Exchange Act by adding Section 4s, which contains language parallel to Section 15F of the Exchange Act that applies to swap dealers and major swap participants. *See* Pub. L. 111–203, 124 Stat. 1376, 1789–1792, section 731 (adding Commodity Exchange Act Section 4s).

The term ''special entity'' is defined to include a ''State, State agency, city, county, municipality, or other political subdivision of a State.'' This definition is consistent with, but not identical to, the statutory definition of ''municipal entity'' in Section 15B(e)(8). (''[T]he 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[.]'').

vi. Guaranteed Investment Contracts

Section 15B(e)(2) of the Exchange Act, as amended by the Dodd-Frank Act, defines ''guaranteed investment contract'' to include ''any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on two or more future dates, such as a forward supply contract.'' [276] In the Proposal, the Commission proposed to include the statutory definition of guaranteed investment contract in Rule 15Ba1–1(a).[277]

The Commission received one comment supporting the proposed definition.[278] Another commenter, however, suggested that the definition does not include all guaranteed investment contracts entered into by municipal entities.[279] Instead, this commenter stated that the statutory definition of guaranteed investment contracts refers only to those contracts related to issues of bonds and similar municipal securities.[280] Another commenter stated that it is ''cognizant of special issues arising in the investment of bond proceeds in guaranteed investment contracts, particularly in the tax area, but [is] unclear how the situation is improved . . . . by additional regulation of [guaranteed investment contract] providers by the SEC.'' [281]

The Commission has carefully considered these comments and is adopting a definition of guaranteed investment contract substantially as proposed but with changes designed to respond to commenters.[282] Specifically, the Commission is interpreting the statutory definition of guaranteed investment contract so that it ''has the same meaning as in section 15B(e)(2) of the Act (15 U.S.C. 78*o*–4(e)(2)); *provided, however,* that the contract relates to investments of proceeds of municipal securities or municipal escrow investments.'' [283]

For the same reasons that the Commission is narrowing the application of the term investment strategies as discussed further herein,[284] the Commission is persuaded by commenters that, at this time, it is appropriate to apply the definition of guaranteed investment contract more narrowly. Guaranteed investment contracts are investment products,[285] and this more limited interpretation is consistent with the approach the Commission is adopting with respect to the application of ''investment strategies,'' which will be limited to plans or programs for the investment of proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments.[286] A municipal entity could invest any funds held by or on behalf of such municipal entity, as opposed to just proceeds of municipal securities, in a guaranteed investment contract. Under the rule as adopted, a provider of a guaranteed investment contract is generally not a municipal advisor as long as such provider does not engage in municipal advisory activities, such as providing advice to the municipal entity or obligated person about the purchase of a guaranteed investment contract that relates to investments of proceeds of municipal securities or municipal escrow investments.[287] The Commission, therefore, believes it is in the public interest and consistent with the purposes of Section 15B to interpret the definition of guaranteed investment contract as described herein.

vii. Issuance of Municipal Securities

Section 15B(e)(4)(A) of the Exchange Act provides in relevant part that a municipal advisor includes a person that provides advice to or on behalf of a municipal entity or obligated person with respect to the ''issuance of municipal securities,'' including advice with respect to ''the structure, timing, terms, and other similar matters'' concerning such issues. Section 3(a)(29) of the Exchange Act defines the term ''municipal securities.'' [288] The broad statutory language in Section 15B(e)(4)(A) of the Exchange Act regarding advice on ''the structure, timing, terms and other similar matters'' concerning such issues suggests that advice on a broad range of activities potentially may be included within advice with respect to the issuance of municipal securities.

The scope of the concept of an ''issuance of municipal securities'' is particularly relevant to the ''advice'' aspect of the municipal advisor definition, as discussed previously herein,[289] because a person's provision of advice to a municipal entity or obligated person only results in municipal advisor status if the subject of that advice involves either the ''issuance of municipal securities'' or ''municipal financial products.'' [290] Several commenters recommended that the Commission provide guidance on the extent to which activities would be

[276] 15 U.S.C. 78*o*–4(e)(2).

[277] *See* proposed rule 15Ba1–1(a).

[278] *See* MSRB Letter. This commenter did not suggest any changes to the proposed definition.

[279] *See* NABL Letter.

[280] *See id.*

[281] *See* State of Indiana Letter.

[282] *See* Rule 15Ba1–1(a).

[283] *See id.*

[284] *See* Section III.A.1.viii.

[285] The Commission notes that, by comparison, swaps and security-based swaps are not investment products, but instead are often used to hedge the risk from other financial transactions. Also, the Commission notes that the protections established by the Dodd-Frank Act with respect to swap and security-based swap transactions discussed above, are not applicable to guaranteed investment contracts or other investment strategies. *See supra* note 275 and accompanying text.

[286] *See infra* Section III.A.1.b.viii. (discussing the term ''investment strategies'' and the exemption in Rule 15Ba1–1(d)(3)(vii)).

[287] The Commission also notes that it has brought several enforcement actions involving investment of proceeds in guaranteed investment contracts. *See, e.g., In the Matter of Banc of America Securities, now known as Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger,* AP File No. 3–14153, Securities Exchange Act Release No. 63451 (December 7, 2010) (Banc of America Securities LLC agreed to settle Commission charges of securities fraud for allegedly engaging in improper practices in connection with the bidding of reinvestment instruments used by municipal entities) (''Banc of America Settlement''); *Securities and Exchange Commission* v. *UBS Financial Services Inc.,* Civil Action No. 11–CV–2885 (D.N.J. May 4, 2011) (UBS agreed to settle Commission charges of securities fraud for allegedly fraudulently rigging over 100 municipal bond reinvestment transactions) (''UBS Settlement''); *Securities and Exchange Commission* v. *J.P. Morgan Securities LLC.,* Civil Action No. 11–CV–3877 (D.N.J. July 7, 2011) (J.P. Morgan agreed to settle Commission charges of allegedly fraudulently rigging at least 93 municipal bond reinvestment transactions) (''JP Morgan Settlement''); *Securities and Exchange Commission* v. *Wachovia Bank N.A, now known as Wells Fargo bank, N.A., successor by merger.,* Civil Action No. 2:11–cv–07135–WJM–MF (D.N.J. December 8, 2011) (Wachovia Bank N.A. agreed to settle Commission charges of allegedly fraudulently rigging at least 58 municipal bond reinvestment transactions) (''Wachovia Settlement''); and *Securities and Exchange Commission* v. *GE Funding Capital Market Services, Inc.,* Civil Action No. 2:11–cv–07465–WJM–MF (D.N.J. December 23, 2011). The reinvestment transactions in these cases involved the reinvestment of municipal bond proceeds in reinvestment instruments, including guaranteed investment contracts, forward purchase contracts, and repurchase agreements.

[288] Specifically, Section 3(a)(29) of the Exchange Act defines the term ''municipal securities'' to mean ''securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs 4(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.'' *See* 15 U.S.C. 78c(a)(29) (emphasis added). Section 3(a)(10) of the Exchange Act defines the term ''security.'' *See* 15 U.S.C. 78c(a)(10).

[289] *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

[290] *See supra* Section III.A.1.b.iv. (discussing the term ''municipal financial products'').

considered ''advice with respect to the *issuance of municipal securities.*'' [291] One commenter suggested that the municipal advisor registration provision in Section 975 of the Dodd-Frank Act is intended to cover advice on certain listed activities within broad categories, including certain ''strategic services,'' ''transaction-related services, and ''post-issuance related services.'' [292] One commenter recommended that such advice should be construed broadly, from a timing perspective, to include ''any advice provided in connection with a municipal securities issue . . . at any point during the pre-issuance planning process as well as throughout the life of the issuance through final payment of principal and interest on the securities (by reason of maturity, earlier redemption, or otherwise, or for such longer period due to delayed payment such as the case of a payment default). . . .'' [293] Another commenter recommended that such advice should not extend to advice after the closing of a specific bond issue.[294]

The Commission generally agrees that activities covered by the subject of the ''issuance of municipal securities'' should be construed broadly as a matter of statutory construction and policy to ensure appropriate protection of municipal entities with respect to advice received relating in some way to the issuance of municipal securities and to limit the potential for circumvention of the municipal advisor registration provision. As discussed previously herein, however, the determination of whether any particular activity constitutes ''advice'' in the first instance for purposes of the municipal advisor definition depends on all the facts and circumstances.[295] The Commission also agrees that ''advice with respect to the issuance of municipal securities'' should be construed broadly from a timing perspective to include advice throughout the life of an issuance of municipal securities, from the pre-issuance planning stage for a debt transaction involving the issuance of municipal securities to the repayment stage for those municipal securities. This interpretation would afford municipal entities and investors with the protections of the municipal advisor registration provision during a time frame that may involve advice on significant matters affecting issues of municipal securities. In this regard, municipal issuers may make significant decisions affecting the structure, timing, terms, or other similar matters concerning an issue of municipal securities early in the planning stages of a transaction and may make significant decisions affecting ongoing compliance, repayment, or refinancing throughout the term of an outstanding bond issue.

In addition, the scope of the concept of the issuance of municipal securities also is particularly relevant to the statutory exclusion to the municipal advisor definition for broker-dealers serving as underwriters, because the underwriting function involves certain activities that relate to the issuance of municipal securities. The exclusion for underwriters from the definition of municipal advisor is limited to activities that are within the scope of an underwriting of a particular issuance of municipal securities. For purposes of the underwriting exclusion to the municipal advisor definition, the function of serving as underwriter on a particular issuance of municipal securities is more circumscribed and encompasses services on a particular transaction during a narrower time frame than the overall focus of the municipal advisor definition with respect to advice on the issuance of municipal securities (which involves a broader focus and longer time frame), as discussed further herein.[296]

viii. Investment Strategies

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.[297] The Commission proposed to interpret the term to mean that it includes, without limitation, the investment of the proceeds of municipal securities and plans, programs, or pools of assets that invest any other funds held by, or on behalf of, a municipal entity.[298] As such, under the proposed interpretation of the statutory definition, any person that provides advice with respect to such funds would have to register as a municipal advisor unless the person was covered by an exclusion or exemption.[299]

Plans or Programs for the Investment of the Proceeds of Municipal Securities

In the Proposal, the Commission asked whether its interpretation of the term ''investment strategies'' should be modified or clarified in any way.[300] Specifically, the Commission asked whether it should exclude plans, programs, or pools of assets that invest funds that are not proceeds of the issuance of municipal securities.[301] The Commission also asked how it would determine when funds should no longer be considered ''proceeds of municipal securities'' if it 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.'' [302]

Commenters generally opposed the proposed interpretation of investment strategies. Many commenters stated that the proposed interpretation was too broad, because it covers any fund held by a municipal entity, regardless of its source.[303] Some commenters asserted that the proposed interpretation is contrary to the language and intent of the Dodd-Frank Act [304] and suggested

[291] *See, e.g.,* MSRB Letter I and NAIPFA Letter I.

[292] *See* MSRB Letter II. Other commenters discussed whether the types of covered activities described by the MSRB should be narrower or broader in the context of the underwriter exclusion. *See* NAIPFA Letter II and Baum Letter.

[293] *See* MSRB Letter I.

[294] *See* NAIPFA Letter I.

[295] *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

[296] *See generally infra* Section III.A.1.c.iv. (discussing the underwriter exclusion). The time frame for the underwriter role generally begins upon the municipal issuer's engagement of the underwriter for a particular issuance of municipal securities and ends at the end of the underwriting period for that issuance. *See infra* notes 589–591 and accompanying text.

[297] 15 U.S.C. 78*o*–4(e)(3).

[298] *See* Proposal, 76 FR 830.

[299] *See id.*

[300] *See id.,* at 835.

[301] *See id.*

[302] *See id.*

[303] *See, e.g.,* letter from Representative Kenny Marchant, dated March 11, 2011 (''Marchant Letter''); SIFMA Letter I; NABL Letter; American Bankers Association Letter I; letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated February 22, 2011 (''Bond Dealers of America Letter''). *See also* letters from Representative Todd Russell Platts, dated April 7, 2011 (''Platts Letter''); Representatives Peter Welch, Thomas Petri and Bill Shuster, dated April 5, 2011 (''Welch Letter''); John Walsh, Acting Comptroller of the Currency, Office of the Comptroller of the Currency, dated May 24, 2011 (''OCC Letter''); Senator Tim Johnson, dated June 9, 2011 (''Johnson Letter''); Brian H. Graff, Craig P. Hoffman, Ilene H. Ferenczy, Judy A. Miller, Mark Dunbar, and James Paul, American Society of Pension Professionals & Actuaries and the National Tax Sheltered Accounts Association, dated April 15, 2011 (''American Society of Pension Professionals Letter''); Brian D. McCoubrey, President and Chief Executive Office, The Savings Bank, dated February 17, 2011 (''Savings Bank Letter''); Celeste Embrey, Assistant General Counsel, Texas Bankers Association, dated February 21, 2011 (''Texas Bankers Association Letter''). *See also infra* Section III.A.1.c.viii. (discussing an exclusion from the definition of ''municipal advisor'' for banks).

[304] *See, e.g.,* Marchant Letter; SIFMA Letter I; NABL Letter; Kutak Rock Letter; letter from Michael B. Koffler, Sutherland Asbill & Brennan LLP on behalf of Massachusetts Life Insurance Company,

that the definition be restricted so that it applies only to the statutorily-identified categories of investments of proceeds of municipal securities and recommendation of and brokerage of municipal escrow investments.[305] One commenter stated that the ''expanded definition'' of investment strategies is not required or even implied by the Dodd-Frank Act and would subject a ''vast swath of activity—which was not intended to be, and need not be, further regulated—to additional regulation.'' [306]

On the other hand, one commenter agreed with the Commission that the use of the word ''includes'' in the statutory definition of investment strategies suggests that the term is not limited to plans or programs for the investment of the proceeds of municipal securities.[307] This commenter stated its belief, however, that Congress intended the definition to be limited to investment activities that relate to the securities and securities-like vehicles of a municipal entity, rather than all investment activities of municipal entities.[308]

In a similar vein, commenters suggested that the definition should encompass only plans or programs for investments in financial instruments, as opposed to investments in, for example, infrastructure, real estate, social welfare, and other non-financial investments.[309] Another commenter stated that, with respect to the funds held by or on behalf of a municipal entity, whether a person is providing advice regarding the ''investment of'' those funds, not other expenditure or use of the funds for non-investment purposes, is the determining factor for deciding that a person is a municipal advisor.[310]

One commenter stated that a ''plan or program,'' as used in the statutory definition of investment strategies, is a series of investment related actions that would be generally akin to a financial plan, not merely advice incidental to a particular trade or investment.[311] Another commenter urged the Commission to limit investment strategies to advice articulated as a part of the investment plan for the proceeds of a municipal securities offering at or before the time the proceeds are received.[312]

Some commenters asserted that public pension plans, participant directed investment programs or plans such as 529 Savings Plans and 403(b) and 457 plans were not intended to be regulated under the Exchange Act or the Dodd-Frank Act and should not be covered under the definition of investment strategies.[313] According to these commenters, the Dodd-Frank Act was intended to regulate those who provide advice regarding the issuance of municipal bonds and the investment of offering proceeds.[314] Therefore, these commenters argue, all governmental retirement plans should be excluded from the definition of investment strategies. Alternatively, one commenter suggested that, at the very least, governmental retirement and savings plans that are funded exclusively through the contribution of the employees as participants should be excluded.[315] Another commenter stated that the phrase ''plans or programs for the investment of proceeds of municipal securities'' implies that the purpose of the plan or program is to invest proceeds of municipal securities, whereas the purpose of public pension plans is to provide retirement benefits.[316] Another commenter suggested that municipal securities regulation was originally intended to regulate the issuance of investment instruments by a municipal entity under which the municipal entity is required to pay the investor in accordance with the terms of the investment.[317] The commenter stated that state employee pension plans, 529 Savings Plans, and assets invested by the state are not investment instruments issued by the state to investors.[318] As such, the commenter stated that they were never intended to be, nor should they now be, regulated under the Exchange Act or the Dodd-Frank Act.[319]

On the other hand, one commenter stated that the term ''investment strategies'' should include any type of investment strategy or advice relating to the investment of funds of investors or other vested persons held in any plan, program, or pool of assets sponsored or established by a state, political subdivision, or municipal corporate instrumentality, or any agency, authority, or instrumentality thereof, such as those created in connection with municipal fund securities, including but not limited to 529 Savings Plans and state and local government investment pools.[320] This commenter further stated that public defined contribution pension plans should also fall within the definition, because these plans share many of the same potential impacts on third-party beneficiaries and

Nationwide Life Insurance Company and The Prudential Insurance Company of America, dated February 22, 2011 (''Insurance Companies Letter''). *See also* Platts Letter; Welch Letter; Johnson Letter; American Society of Pension Professionals Letter. Other than referring to statutory language, none of these letters offered other evidence of such intent.

[305] *See, e.g.,* SIFMA Letter I; NABL Letter; ABA Letter; Bond Dealers of America Letter; letter from Karrie McMillan, General Counsel, Investment Company Institute, dated February 22, 2011 (''ICI Letter''). *See also* Marchant Letter and Platts Letter.

[306] SIFMA Letter I. *See also* NABL Letter.

[307] *See* MSRB Letter.

[308] *See id.*

[309] *See* NABL Letter. *See also* SIFMA Letter I (stating that ''the [Commission] should clarify that the term [investment strategies], in any case, does not include local government investment pools, purchases of real estate or expenditures for, among others, infrastructure, equipment and personnel, which often are described as 'infrastructure investments' '').

[310] *See* SIFMA Letter I.

[311] *See* SIFMA Letter I. *See also* American Bankers Association Letter I (stating that the term ''investment strategy'' by definition ''contemplates a series of steps to reach a particular investment goal'') and Financial Services Institute Letter.

[312] *See* James S. Keller, Chief Regulatory Counsel, The PNC Financial Services Group, Inc., dated February 22, 2011 (''PNC Financial Services Letter'').

[313] *See, e.g.,* Utah Retirement Systems Letter; letter from Jeffrey W. States, State Investment Officer, Nebraska Investment Council, dated February 15, 2011 (''Nebraska Investment Council Letter''); letter from Lisa Tate, Vice President, Litigation & Associate General Counsel, dated February 22, 2011 (''ACLI Letter''); letter from Gary A. Sanders, Vice President—Securities & State Government Relations, National Association of Insurance and Financial Advisors, dated June 13, 2011 (''National Association of Insurance and Financial Advisors Letter''); letter from Ethan E. Kra, Vice President, Pension Practice Council and William R. Hallmark, Chair, Public Plans Subcommittee, American Academy of Actuaries, dated June 15, 2011 (''American Academy of Actuaries Letter'').

[314] *See* American Society of Pension Professionals Letter; American Academy of Actuaries Letter; Fraser Stryker Letter.

One commenter stated that governmental retirement plans should not be considered investment strategies unless the employer funds such plans with proceeds from the issuance of pension obligation bonds. *See* Fraser Stryker Letter.

[315] *See* American Society of Pension Professionals Letter.

[316] *See* American Academy of Actuaries Letter.

[317] *See* Nebraska Investment Council Letter.

[318] *See id.*

[319] *See id.* This commenter pointed out that the terms ''securities'' and ''municipal securities'' were not changed by the Dodd-Frank Act. As such, this commenter stated that, ''[w]ith respect to the grant of authority to the [Commission] over the 'issuance of municipal securities,' there has been no change under the Dodd-Frank Act to justify the expansion of the [Commission's] authority.'' Further, the commenter noted that the statutory definition of investment strategies indicates that plans and programs that are intended to be covered must relate to the proceeds of municipal securities. The commenter argued that the definition of municipal entity was not intended to expand the types of assets regulated by the Commission and stated that ''[t]he underlying notion that the [Commission] is still regulating 'municipal securities' should not be disregarded without a clear Congressional mandate, which must necessarily include a change to the definition of 'municipal security.' '' Additionally, this commenter stated that, since government plans are specifically exempt from ERISA, ''[t]he proposed rule seems to be an end-run around ERISA, now subjecting the fiduciaries of these state plans to federal oversight without a Congressional directive to do so.'' *But see infra* note 320 and accompanying text (discussing the MSRB Letter, which argues that some 529 Savings Plans are municipal fund securities).

[320] *See* MSRB Letter.

are generally exempt from the protections afforded by ERISA to private pension funds.[321]

The same commenter stated that funds should cease to be subject to the definition of investment strategies once their investment is no longer governed by legal documents or covenants governing the use of such funds.[322] Similarly, another commenter stated that proceeds should mean proceeds raised in securities offerings, until they are used for the purposes described in the use of proceeds section in the offering document, or otherwise commingled with the general funds of the municipal entity.[323] Additionally, one commenter suggested that ''proceeds'' should not extend to ''replacement proceeds'' such as pledge funds.[324]

The Commission has carefully considered the issues raised by commenters on the Proposal. As noted above, Exchange Act Section 15B(e)(3) defines investment strategies to include 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.[325] In response to comments on the proposed definition of ''investment strategies,'' the Commission is adopting Rule 15Ba1–1(b), which defines ''investment strategies'' as having ''the same meaning as in section 15B(e)(3) of the Act (15 U.S.C. 78*o*–4(e)(3)), and includes plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.'' [326]

While the Commission continues to believe that the term ''includes'' is not limiting,[327] the Commission is adopting a definition of ''investment strategies'' that, as compared to the definition in the Proposal, focuses more narrowly on the statutorily-identified categories of ''proceeds of municipal securities'' and ''municipal escrow investments.'' In this regard, the Commission is adopting Rule 15Ba1–1(d)(3)(vii), which will effectively narrow the focus of the term ''investment strategies'' to investments of proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments. Specifically, Rule 15Ba1–1(d)(3)(vii), as adopted, exempts from the definition of municipal advisor any person that provides advice to a municipal entity or obligated person with respect to municipal financial products to the extent that such person provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

Pursuant to Section 15B(a)(4) of the Exchange Act, the Commission may exempt any class of municipal advisors from any provision of Section 15B or the rules and regulations thereunder, if it finds that such an exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B.[328] The Commission believes that providing the exemption described above is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act. The exemption tailors protection of municipal entities to those activities related to the investment of the proceeds of municipal securities and related municipal escrow investments, which are the specific categories of activities that Congress identified in the statutory definition of the term ''investment strategies'' and that the Commission believes have the most direct nexus to municipal securities and the protection of investors and municipal issuers in furtherance of the purposes of Section 15B.

In the Proposal, the Commission asked how it should determine when funds should no longer be considered proceeds of municipal securities, if it were to limit investment strategies to proceeds of municipal securities or the recommendation of or brokerage of municipal escrow investments.[329] While the Exchange Act does not define the term ''proceeds of municipal securities,'' the Federal tax laws provide a longstanding, known definition of ''proceeds'' of tax-exempt bonds issued by State and local governments, including related definitions of various types of proceeds (including ''gross proceeds,'' ''sale proceeds,'' ''investment proceeds,'' and ''transferred proceeds'') under Section 148 of the Internal Revenue Code of 1986, as amended,[330] and Section 1.148–1 through 1.148–11 of the Regulations [331] for the purpose of the arbitrage [332] investment restrictions applicable to investments of proceeds of tax-exempt municipal securities. The arbitrage rules apply as long as the tax-exempt municipal securities are outstanding, and non-compliance with the arbitrage rules can result in the loss of the tax-exempt status of the interest on the municipal securities retroactively to the date of issuance. The Commission believes that the well-developed concept of proceeds of tax-exempt

[321] *See id.*

[322] *See id.* This commenter stated that professionals advising on, or executing investments of, public funds that are not subject to specific restrictions or covenants, other than municipal derivatives or guaranteed investment contracts, would instead be subject to existing applicable investment adviser, broker-dealer, or bank regulations governing such transactions.

[323] *See* ABA Letter.

[324] *See* NABL Letter.

[325] The application of the term ''municipal financial products'' to ''municipal derivatives'' and ''guaranteed investment contracts'' is discussed above. *See supra* Sections II.A.1.b.v. and vi., respectively. The term ''municipal escrow investments'' is described in more detail below in this Section III.A.1.b.viii.

[326] While the definition of ''investment strategies'' in Rule 15Ba1–1(b), as adopted, is consistent with the definition of ''investment strategies'' in Section 15B(e)(3) of the Act, this definition, as adopted, clarifies the Commission's interpretation that investment strategies specifically excludes municipal derivatives and guaranteed investment contracts, as these products are expressly included in the definition of municipal financial product, as defined by Section 15B(e)(5) of the Act and Rule 15Ba1–1(i), as adopted. This interpretation is consistent with the Commission's interpretation in the Proposal. *See* Proposal, 76 FR 830–831.

[327] Section 15B(e)(3) of the Exchange Act uses the word ''including'' as expanding or illustrative, not as exclusive or limiting.

[328] *See* 15 U.S.C. 78*o*–4(a)(4).

[329] *See* Proposal, 76 FR 835.

[330] 26 U.S.C. 148.

[331] 26 CFR 148.1–148.11.

[332] Arbitrage, in the municipal securities context, is the profit earned by the municipal entity from borrowing funds in the tax-exempt market and investing them in the taxable market. The arbitrage rules have two main branches. The yield restriction branch of the rules generally limit the yield permitted on investments of proceeds of tax-exempt municipal securities to a yield that is not materially higher than the yield on the municipal securities; provided, however, specific exceptions permit unrestricted investment during certain temporary periods. The second branch of the arbitrage rules, the rebate branch, requires that any arbitrage that the municipal entity earns, including during a temporary period, must be rebated to the federal government, unless one of the several specific exceptions to the rebate requirement applies to the issue of municipal securities. Any issue of tax-exempt municipal securities can be subject to yield restriction, rebate, or both. The arbitrage rules and the various exceptions are important factors in the structuring of any tax-exempt issue of municipal securities. Under the arbitrage rules, gross proceeds include amounts covered by the following interrelated definitions. Sale proceeds are the gross cash amount paid by the purchasers for the securities at the initial sale of the issue. Investment proceeds are the amounts received from investing the proceeds of the issue. If proceeds of a refunding issue are used to pay off a prior issue, any remaining proceeds of the prior issue become, for tax purposes, transferred proceeds of the refunding issue. Proceeds, then, are sales proceeds plus investment proceeds plus transferred proceeds. Replacement proceeds are amounts that may be used to pay debt service. Gross proceeds are defined as proceeds plus replacement proceeds. *See* Frederic L. Ballard, Jr., *ABCs of Arbitrage: Tax Rules for Investment of Bond Proceeds by Municipalities* (Section of State and Local Government Law, American Bar Association, 2007) (''Ballard, *ABCs of Arbitrage''*).

municipal securities under the arbitrage rules is well-known to issuers and to the professional participants in the municipal marketplace.

Some commenters that discussed ''proceeds of municipal securities'' did so by reference to Federal tax regulations and terms defined therein.[333] Because the arbitrage rules governing the investment of bond proceeds are central to an issue of tax-exempt municipal securities and well-known in the municipal market, the Commission has determined to define proceeds of municipal securities in a similar manner and to apply the term to tax-exempt municipal securities and also to taxable [334] municipal securities. Therefore, for purposes of the application of the definition of investment strategies and in response to comments raised on this issue,[335] the Commission is adopting Rule 15Ba1–1(m)(1), which defines ''proceeds of municipal securities'' as (i) monies derived by a municipal entity from the sale of municipal securities, (ii) investment income derived from the investment or reinvestment of such monies, (iii) any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds, and pledged funds created for such purpose,[336] and (iv) the investment income derived from the investment or reinvestment of monies in such funds.[337] Further, consistent with the general definition of proceeds under the arbitrage rules, Rule 15Ba1–1(m)(1) also provides that when such monies are spent to carry out the authorized purposes of municipal securities, they cease to be proceeds of municipal securities.

Rule 15Ba1–1(m), however, establishes an exception from the definition of proceeds of municipal securities. The exception provides that, solely for purposes of Rule 15Ba1–1(m), monies derived from a municipal security issued by an education trust established by a State under Section 529(b) of the Internal Revenue Code are not proceeds of municipal securities.[338] Although interests in 529 Savings Plans may be municipal fund securities, and therefore municipal securities, monies derived from a municipal security issued by an education trust established under Section 529(b) come from individuals making investments for the purpose of prepaying or accumulating savings for higher education costs, and do not come from municipal entities. Because these monies are derived from individuals primarily for the benefit of these individuals and not municipal entities, the Commission does not believe persons engaged in activities with respect to these monies are appropriately governed by this registration regime.[339]

Rule 15Ba1–1(m) also states that in determining whether or not funds to be invested constitute proceeds of municipal securities for purposes of Rule 15Ba1–1(m), a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person has a reasonable basis for such reliance.[340] This exemption is discussed in more detail below.

The Commission notes that the exemption from the definition of ''municipal advisor'' in Rule 15Ba1–1(d)(3)(vii) does not permit a person to avoid registering as a municipal advisor by stating that its advice is isolated or incidental and thus not within the meaning of ''plan or program'' in the definition of investment strategies. The Commission is not persuaded by commenters who have stated that ''plan or program'' means a series of investment decisions [341] and does not agree that this would be an appropriate interpretation of the statute. Any advice or recommendation with respect to the investment of proceeds not otherwise subject to an exclusion or exemption [342] would be a municipal advisory activity, even if such advice or recommendation is not part of a series of investment-related actions or articulated as part of the investment plan for the proceeds at or before the time the proceeds are received.[343] For example, advice or a recommendation with respect to a single trade or investment not otherwise subject to an exemption would be a municipal advisory activity, and the person providing such advice would not be exempt from the definition of municipal advisor pursuant to Rule 15Ba1–1(d)(3)(vii).

Commingling of Proceeds of Municipal Securities With Other Funds and Proceeds Determinations Generally

In the Proposal, the Commission provided that commingled proceeds, regardless of when they lose their character as proceeds, would still constitute ''funds held by or on behalf of a municipal entity,'' but asked whether that interpretation was too broad.[344] Additionally, the Commission asked what obligations parties other than a municipal entity should have in determining whether funds held by or on behalf of the municipal entity are proceeds of municipal securities.[345]

The Commission received a number of comments in response to these questions. One commenter stated ''[t]he Commission's proposed definition effectively reads out the statutory requirement to trace assets to the

[333] *See, e.g.,* NABL Letter. In addition, as discussed below, some commenters suggested that a municipal entity should have the responsibility for tracking and characterizing proceeds because it is already required to do so under certain tax laws, implying that the definition of proceeds of municipal securities should be consistent with such definition under tax laws. *See infra* notes 361–362 and accompanying text.

[334] Municipal issuers sometimes issue small amounts of taxable bonds in combination with tax-exempt bonds in the same offerings to finance costs that are ineligible for tax-exempt bond financing. The most significant recent type of taxable municipal securities was the temporary stimulus ''Build America Bond'' program, with respect to which approximately $181 billion were issued in 2009–2010 and the arbitrage rules on bond proceeds notably applied directly to those taxable municipal securities due to a Federal subsidy. The taxable bond sector of the municipal securities market represents a relatively small portion of the overall municipal securities market. For example, less than 9% of new issues in the municipal securities market in 2012 were taxable bonds, according to Thomson-Reuters data.

[335] *See supra* note 333 and accompanying text.

[336] Such applicable legal documents include, for example, the indentures, ordinances, or resolutions of the issuer of the municipal securities, and the resolutions, leases, loan agreements, or other agreements of an obligated person.

[337] *See* Rule 15Ba1–1(m)(1). *See also supra* notes 330–331 and accompanying text (discussing Federal tax laws and regulations related to the definition of proceeds).

[338] *See* Rule 15Ba1–1(m)(2). *See also supra* notes 313–319 (discussing comments regarding the inclusion of certain plans under ''investment strategies'').

[339] Because monies in accounts of 529 Savings Plans are not included in the definition of proceeds of municipal securities for purposes of Rule 15Ba1–1(m), persons providing advice with respect to the investment of monies in 529 Savings Plans will not be required to register as municipal advisors based on this prong of the municipal advisor definition to the extent their municipal advisory activities are limited to such advice. *See* note 338 and accompanying text. However, a person that advises a municipal entity with respect to how to structure a 529 Savings Plan may be required to register as a municipal advisor. Interests in 529 Savings Plans are municipal securities, and such a person would be engaging in municipal advisory activities to the extent he or she provides advice with respect to the structure, timing, terms, or other similar matters concerning such an issuance unless an exclusion or exemption applies.

[340] *See* Rule 15Ba1–1(m)(3).

[341] *See supra* notes 311–312 and accompanying text.

[342] *See, e.g., infra* Section III.A.1.c.iv. (discussing an exemption for broker-dealers serving as underwriters).

[343] *See supra* notes 311–312 and accompanying text.

[344] *See* Proposal, 76 FR 836.

[345] *See id.,* at 835.

proceeds of municipal securities[,]'' and ''[t]hus, an adviser providing advice to a municipal entity with respect to any plan, program or pool of assets—even if the plan, program or pool of assets did not consist of the proceeds of municipal securities (such as, for example, 529 Savings Plans and public pension plans)—would be required to register with the Commission if no exclusion is available.'' [346] Some commenters stated that once the proceeds of a municipal offering are commingled with other funds, they lose their character as proceeds.[347] Commenters also stated that subsequent investments of proceeds are not proceeds of municipal securities, unless the subsequent investment is part of the plan or program that was developed at the time of, and in connection with, the initial investment.[348]

One commenter stated that a person should not be considered to be providing advice with respect to an investment strategy if he reasonably believes that the relevant funds are not from an account specifically for the proceeds of municipal securities issuances, unless the municipal entity or obligated person communicated otherwise.[349] This commenter also stated that, depending on the Commission's interpretation of investment strategies, the adviser should only be considered a municipal advisor if the funds invested are proceeds of municipal securities, the adviser is aware of this fact, and there is no evidence of a sham.[350] Another commenter further suggested that a municipal entity should have the responsibility for tracking and characterizing municipal proceeds.[351] This commenter suggested that advisors should be entitled to reasonably rely on the municipal entity's representation since it is already required to track proceeds under certain state and Federal tax laws.[352]

One commenter stated that, in the context of obligated persons, only the investment of the proceeds of municipal securities, and not all monies of the obligated person, could be considered proceeds of municipal securities, even if the proceeds may be commingled with other monies for investment purposes.[353] Further, another commenter urged the Commission to exclude investments of bond proceeds for the accounts of obligated persons when the investment is not pledged as security for a municipal securities issue.[354] On the other hand, a different commenter stated that in no event should the definition of investment strategies apply to engagements with obligated persons, because obligated persons' funds are not held in plans, programs, or pools of assets that invest funds held by or on behalf of a municipal entity.[355]

As discussed above, in response to comments, the Commission is adopting a definition of ''proceeds of municipal securities'' for purposes of the term ''investment strategies,'' which is consistent with Federal tax laws and regulations related to the definition of proceeds. This definition provides that when monies are spent to carry out the authorized purposes of the municipal securities, they cease to be proceeds of municipal securities.[356] Under this definition and except as otherwise noted below, the mere fact that proceeds are commingled with other funds generally does not cause such monies to lose their character as proceeds. However, once the proceeds are spent to carry out an authorized purpose of the issuance of municipal securities, and the applicable legal documents or any other agreement pertaining to the investment of proceeds of municipal securities are no longer in effect, such funds will no longer constitute proceeds of municipal securities.

The Commission does not agree with those commenters who argued that once the proceeds of a municipal offering are commingled with other funds, they lose their character as proceeds.[357] The adopted definition of ''proceeds of municipal securities'' and the treatment of commingled proceeds are familiar concepts to market participants because they are consistent with Federal tax laws and regulations related to the definition of proceeds. The Commission believes this treatment of commingled proceeds will help to ensure that municipal advisors are registered and regulated as such until commingled proceeds are spent to carry out the authorized purposes of the municipal securities. Further, as discussed above, to assist a person in determining whether or not funds to be invested constitute proceeds of municipal securities, such person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[358] As noted below, municipal entities and obligated persons generally already track investments and ultimate expenditures of proceeds of tax-exempt municipal securities for authorized purposes in order to comply with certain state and tax Federal laws and governing legal documents pertaining to the investment of proceeds of municipal securities.[359]

With respect to the tracing of proceeds after commingling, Federal tax arbitrage rules provide that if amounts of proceeds constituting investment earnings (excluding those of municipal escrow investments) on certain tax-exempt municipal securities (particularly governmental bonds and certain governmentally-owned private activity bonds) are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the municipal issuer and the amounts are reasonably expected to

[346] *See* ICI Letter. *See also* American Bankers Association Letter I and American Society of Pension Professionals Letter (stating that the Proposal indicated that the expansive definition of ''investment strategies'' avoids the need to trace the investment of proceeds of municipal securities commingled with other public funds and that this ''regulatory shortcut'' exceeds the authority granted under the Dodd-Frank Act).

[347] *See, e.g.,* SIFMA Letter I; NABL Letter; letter from Catherine McClellan, Legal & Regulatory Affairs, SunTrust Banks, Inc., dated February 22, 2011 (''SunTrust Letter''); and Financial Services Roundtable Letter.

[348] *See* SIFMA Letter I. *See also* American Bankers Association Letter I.

[349] *See* SIFMA Letter I. *See also* BNY Letter (stating that ''the Commission should clarify that a person would not be considered to provide advice that triggers municipal advisor status if the person reasonably believes that the funds for the financial activity on which the person is advising are from an account of the municipal entity or obligated person other than an account specifically for the proceeds of municipal securities or escrow funds that contains [sic] funds from multiple sources other than the initial proceeds of a municipal security'').

[350] *See* SIFMA Letter I.

[351] *See* Kutak Rock Letter. *See also* Financial Services Roundtable Letter.

[352] *See* Kutak Rock Letter (stating that commingled proceeds are required by federal tax laws (applicable to tax-exempt bonds) and state laws to be traced for use and investment purposes). Another commenter suggested that municipal entities, and not their municipal advisors, should have the responsibility for identifying any assets in accounts maintained at banks or broker-dealers that should be deemed proceeds. *See* Financial Services Roundtable Letter.

[353] *See* Kutak Rock Letter.

[354] *See* NABL Letter. This commenter argued that, ''[s]ince only a small portion of an obligated person's investible assets may represent unspent proceeds of a municipal securities issue, and since it would not be apparent to investment advisors whether private entities are obligated persons unless the Commission limits municipal financial products to those pledged as security for a municipal securities issue, any more expansive reading of the term would impose an impossible diligence burden on corporate investment advisors.'' *Id.*

[355] *See* SIFMA Letter I.

[356] *See* Rule 15Ba1–1(m)(1).

[357] *See supra* note 347 and accompanying text.

[358] *See* Rule 15Ba1–1(m)(3).

[359] *See infra* note 361 and accompanying text.

be spent for governmental purposes within six months from the date of the commingling, those proceeds are treated as spent at the time of commingling.[360] This Federal tax arbitrage rule mainly benefits general purpose municipal entities (*e.g.,* States, cities, and counties) with respect to very short-term investment practices involving their general fund accounts. The Commission likewise considers proceeds as spent at the time of such commingling in the context of municipal advisors because, as noted above, arbitrage rules governing the investment of bond proceeds are central to an issue of tax exempt municipal securities and are well-known in the municipal market. Because the approach the Commission is taking today is consistent with Federal tax arbitrage rules, it should be consistent with the current practice of municipal entities and obligated persons related to tracing proceeds of municipal securities. Further, because such proceeds are reasonably expected to be spent for governmental purposes within six months from the date of commingling, the Commission believes these proceeds involve shorter term investments and therefore are subject to lower risk. As a result, they raise less concern.

The Commission believes that any person that does not satisfy the conditions for an exclusion or exemption from the definition of municipal advisor should know whether the person it is advising is a municipal entity or obligated person and whether the relevant funds constitute proceeds of municipal securities. As commenters stated, municipal entities and obligated persons generally already track investments and ultimate expenditures of proceeds of tax-exempt municipal securities for authorized purposes in order to comply with certain state and Federal tax laws and governing legal documents pertaining to the investment of proceeds of municipal securities.[361] Thus, with respect to the tracing of proceeds of municipal securities to investments and expenditures for authorized purposes, the Commission does not believe that the municipal advisor registration regime will impose any significant additional burden on municipal entities, obligated persons, or municipal advisors.[362]

Reasonable Reliance on Representations for Proceeds Determinations

As set forth in Rule 15Ba1–1(m)(3), in determining whether or not relevant funds constitute proceeds of municipal securities for purposes of Rule 15Ba1–1(m), a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided the person has a reasonable basis for such reliance.[363] Under Rule 15Ba1–1(m)(3), a person need not obtain a separate written representation each time an investment is made, and can instead rely on a prior written representation if the person has a reasonable basis for reliance. The Commission believes that a determination of whether or not a person has a reasonable basis to rely on a written representation requires reasonable diligence, based on all the facts and circumstances, including review of the written representation and other relevant information reasonably available to the person. For example, a person should not ignore information [364] in the person's possession as a result of which such person would know that the representation is inaccurate. In such a circumstance, the person seeking to rely on the representation should make further inquiry to verify the accuracy of the representation in order to show a reasonable basis for the reliance. However, a person relying on a written representation generally need not independently verify all the information underlying the representation. Depending on the particular facts and circumstances, however, a person seeking to rely on such representations should take into account other information, including, but not limited to, information that is reasonably available to such person either as a result of the person's relationship with the municipal entity or obligated person or that is provided by other parties to the relevant transaction.[365]

Municipal Escrow Investments

Section 15B(e)(3) of the Exchange Act provides that the term investment strategies includes, in part, ''the recommendation of and brokerage of municipal escrow investments.'' [366] However, Section 15B(e) of the Exchange Act does not define the term ''municipal escrow investments.''

Several commenters discussed the term ''municipal escrow investments'' as used in the context of investment strategies and some asked for further Commission guidance on the meaning of this term.[367] For example, one commenter stated that Congress intended the term to be limited to accounts holding the proceeds of municipal securities pending deployment.[368] Another commenter stated that municipal escrow investments means investments deposited in an escrow account to ''defease'' [369] municipal securities.[370] Another commenter stated that municipal escrow investments are

[360] *See* Treas. Reg. § 1.148–6(d)(6).

[361] *See* Kutak Rock Letter. *See also* Financial Services Roundtable Letter.

[362] *See, e.g.,* Kutak Rock Letter (noting that ''[a]dvisors should be entitled to reasonably rely on a municipal entity's tracking and characterization of the proceeds of municipal securities, as they are already entitled to do so under state and federal tax laws'').

[363] *See* Rule 15Ba1–1(m)(3).

[364] For example, such person may have acquired other information as a result of its interaction with the municipal entity or obligated person, either in connection with the transaction with respect to which it received the written representation or otherwise.

[365] The Commission notes that it has in other contexts expressed similar views on whether a person's reliance on information is reasonable. For example, under Regulation R, a bank or a broker-dealer satisfies its customer eligibility requirements if the bank or broker-dealer ''has a reasonable basis to believe that the customer'' is an institutional customer or high net worth customer before the time specified in the rule. *See* 17 CFR 247.701. When adopting Regulation R, the Commission stated that a bank or broker-dealer would have a ''reasonable basis to believe'' if it obtains a signed acknowledgment that the customer met the applicable standards, unless it had information that would cause it to believe that the information provided by the customer was or was likely to be false. *See* Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks, Securities Exchange Act Release No. 56501 (September 28, 2007), 72 FR 56514 (October 3, 2007).

[366] 15 U.S.C. 78*o*–4(e)(3).

[367] *See, e.g.,* ABA Letter and SIFMA Letter I.

[368] *See* letter from Charles W. Cary, Jr., Chief Investment Officer, Division of Investment Services, Employees' Retirement System of Georgia and Teachers Retirement System of Georgia, dated February 21, 2011 (''Teachers Retirement System Letter'').

[369] The MSRB provides the following definition for ''defeasance'' or ''defeased''—''Termination of certain of the rights and interests of the bondholders and of their lien on the pledged revenues or other security in accordance with the terms of the bond contract for an issue of securities. This is sometimes referred to as a 'legal defeasance.' Defeasance usually occurs in connection with the refunding of an outstanding issue after provision has been made for future payment of all obligations related to the outstanding bonds, sometimes from funds provided by the issuance of a new series of bonds. In some cases, particularly where the bond contract does not provide a procedure for termination of these rights, interests and lien other than through payment of all outstanding debt in full, funds deposited for future payment of the debt may make the pledged revenues available for other purposes without effecting a legal defeasance. This is sometimes referred to as an 'economic defeasance' or 'financial defeasance.' If for some reason the funds deposited in an economic or financial defeasance prove insufficient to make future payment of the outstanding debt, the issuer would continue to be legally obligated to make payment on such debt from the pledged revenues.'' *See* definition of ''Defeasance'' or ''Defeased'' in Glossary of Municipal Securities Terms, MSRB (3d ed. 2013), available at *http://msrb.org/glossary.aspx* (''MSRB Glossary'').

[370] *See* Kutak Rock Letter.

investments of funds in a segregated escrow account established by the municipal entity or obligated person to hold funds that have been allocated for satisfying a specific and identified obligation of the municipal entity or obligated person and maintained by an escrow agent for the municipal entity or obligated person.[371] One commenter stated that the Commission should recognize that the term ''municipal escrow investments'' has a different and narrower meaning than ''proceeds of municipal securities'' and is limited to investments held in an escrow account.[372] This commenter also suggested that the Commission should clarify that merely providing brokerage of municipal escrow investments does not make a person a municipal advisor.[373]

The Commission has carefully considered the issues raised by commenters on the Proposal and has determined to provide a definition for ''municipal escrow investments.'' [374] For purposes of the definition of investment strategies, the Commission is defining ''municipal escrow investments'' as proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.[375] Because it is a separate component of the statutory definition of investment strategies, the Commission agrees with the comments that ''municipal escrow investments'' does not necessarily have the same meaning as ''proceeds.'' [376] At the same time, however, municipal escrow investments generally are funded with proceeds raised from the issuance of municipal securities in refunding or refinancing transactions to be used to provide for repayment of prior outstanding issues of municipal securities and these escrows also may include certain other funds, such as an issuer's cash contribution derived from revenues.[377] In addition, municipal escrow investments may be funded in part from equity-type funds which may be viewed as equity or as a broad category of proceeds as a result of their escrow pledge to secure the outstanding municipal securities to be refinanced and their attendant close nexus to those municipal securities.[378] The definition of municipal escrow investments provided herein, consistent with Rule 15Ba1–1(d)(3)(vii), protects funds that are used for payment of the municipal securities issue, whether or not they are derived from the sale of municipal securities.

The Commission believes that this definition of municipal escrow investments is appropriate in order to protect both investors in municipal securities and municipal entities for reasons discussed further below. These municipal escrow investments typically involve investments of significant amounts of proceeds of municipal securities for long periods of time linked to call restrictions or maturities of refunded debt. These features make municipal escrow investments particularly vulnerable to abuse, and in fact significant investment pricing abuses have occurred in the area of municipal escrow investments in the past and the potential for future pricing abuses continues to exist in this area.[379] In one particularly notable historic example, pricing abuses involving municipal escrow investments were the subject of a major joint enforcement initiative involving the Commission, the Internal Revenue Service, and the U.S. Attorney for the Southern District of New York that affected a large number of major broker-dealers with respect to artificially high prices on U.S. Treasury securities charged by such dealers in sales of such securities to municipal entities to fund municipal escrow investments.[380]

The Commission notes that a person merely providing brokerage of municipal escrow investments would not be a municipal advisor if such person does not provide advice with respect to such investments.[381] The purchase and sale of escrow investments upon the direction of an obligated person or its financial advisor without rendering advice is merely a provision of brokerage services and does not render such person a municipal advisor. It is the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal escrow investments that renders a person a municipal advisor.[382]

Also, consistent with the definition of proceeds of municipal securities that the Commission is adopting, the Commission is including a written representation component in the definition of municipal escrow investments. Accordingly, Rule 15Ba1–1(h)(2) states that, in determining whether or not funds to be invested or reinvested constitute municipal escrow investments for purposes of Rule 15Ba1–1(h), a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[383] As with the written representation component under the definition of proceeds of municipal securities, under Rule 15Ba1–1(h), a person need not obtain a separate written representation each time an investment is made, and can instead rely on a prior written representation if the person has a reasonable basis for reliance. For this purpose, the same standard and principles apply in determining whether a person has a reasonable basis for such reliance as discussed previously with respect to reliance on representations regarding proceeds determinations.[384]

Other Comments on the Scope of the Proposed Interpretation of ''Investment Strategies''

In addition to responses to specific requests for comment, the Commission received a number of other comments regarding its proposed interpretation of the statutory definition of investment

[371] *See* SIFMA Letter I.

[372] *See* ABA Letter.

[373] *See id.* Rather, the commenter asserted that providing advice with respect to the recommendation of, and brokerage of, municipal escrow investments makes a person a municipal advisor.

[374] *See* Rule 15Ba1–1(h).

[375] *See* Rule 15Ba1–1(h)(1).

[376] *See* Rule 15Ba1–1(m) (defining proceeds of municipal securities).

[377] *See, e.g.,* Ballard, *ABCs of Arbitrage* at 169 (''A refunding escrow is any fund that contains proceeds of a refunding issue for use in paying principal or interest on a prior issue. Normally, an issuer will contribute either revenues or unspent prior issue proceeds to a refunding escrow in addition to proceeds of the refunding issue.). *See also* Treas. Reg. § 1.148–1(b), which defines a ''refunding escrow'' generally to mean ''one or more funds established as part of a single transaction or a series of related transactions, containing proceeds of a refunding issue and any other amounts to provide for payment of principal or interest on one or more prior issues.'')

[378] *See* Treas. Reg. § 1.148–1(b) (definitions of ''proceeds'' and ''replacement proceeds,'' respectively).

[379] *See generally* Robert A. Fippinger, *The Securities Law of Public Finance* (3rd Ed. 2012) at § 14:12 entitled ''Markup Fraud: Yield Burning.''

[380] *See* SEC Press Release No. 2000–45 (April 6, 2000), in which the SEC announced a global settlement with 17 broker-dealers with respect to pricing abuses in municipal escrow investments. The artificial pricing practices are known as ''yield-burning'' and this settlement is known as the ''global yield-burning settlement.''

[381] *See infra* Section III.A.1.c.iv. at notes 642–645 and accompanying text (discussing that certain routine selling activities would not constitute municipal advisory activities).

[382] *See also infra* notes 637–641 and accompanying text (discussing when advice given by a broker-dealer is considered to be ''solely incidental'' to the conduct of his business as a broker or dealer).

[383] *See* Rule 15Ba1–1(h)(2).

[384] *See supra* notes 364–365 and accompanying text.

strategies. For example, one commenter requested that the Commission clarify that the term ''investment strategies'' does not include separate accounts supporting insurance contracts or their underlying investment vehicles.[385] The commenter reasoned that the funds invested in such insurance contracts are not proceeds of municipal securities, but are employer and employee contributions.[386] Another commenter argued that the term ''municipal financial product'' should not include ''an insurance product tailored to a municipal entity,'' because ''such products . . . are already quite well regulated.'' [387]

The Commission agrees that employee contributions are not proceeds of municipal securities because these funds are derived from salary deduction arrangements with individual employees and not from the issuance of a municipal security. Therefore, a person providing advice with respect to such contributions would be exempt from the definition of municipal advisor to the extent their municipal advisory activities are limited to such advice. Whether a person providing advice with respect to employer contributions will be exempt, however, will depend upon whether such funds are proceeds of municipal securities. In general, public pension plans do not include proceeds of municipal securities because proceeds of tax-exempt municipal securities generally cannot be spent to fund investments for pension liabilities.[388] Further, the Commission agrees that a person providing advice with respect to other insurance products tailored to a municipal entity would not be engaged in municipal advisory activities if the insurance products do not involve the investment of proceeds of municipal securities because the final rules narrow the focus of the term ''investment strategies'' to those involving investments of proceeds of municipal securities and municipal escrow investments with a new exemption in Rule 15Ba1–1(d)(3)(vii).

ix. Pooled Investment Vehicles

As discussed above, the Commission proposed to interpret the statutory definition of the term ''investment strategies'' to include ''pools of assets that invest funds held by or on behalf of a municipal entity.'' [389] Further, as part of the discussion of the term ''investment strategies,'' the Commission noted in the Proposal that, to the extent a person is providing advice to certain pooled investment vehicles in which a municipal entity has invested funds along with other investors, such pooled investment vehicles would not be considered funds ''held by or on behalf of a municipal entity.'' [390] Consequently, a person providing advice to such vehicle would not have to register as a municipal advisor. However, the Commission noted that, 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 a person providing advice with respect to a LGIP would have to register as a municipal advisor, absent eligibility for some other exclusion or exemption.[391]

The Commission requested comment on whether it should modify or clarify its proposed interpretation of the circumstances under which a pooled investment vehicle would be considered to involve funds ''held by or on behalf of a municipal entity,'' including whether the proposed interpretation should no longer apply if municipal entities are not considered to be the ''primary investors'' in the pooled investment vehicle or if funds of municipal entities exceed a certain threshold in the pooled investment vehicle.[392] The Commission received several comment letters addressing the interpretation.

One commenter supported the Commission's proposed interpretation, without further request for modification.[393] Two commenters opposed any approach to determine municipal advisory status based on whether municipal entities were the ''primary investors'' in the pooled vehicle, citing the difficulty of making such a determination on an ongoing basis.[394] Another commenter urged the Commission to reiterate that an adviser to a pooled investment vehicle in which a municipal entity or obligated person invests is not a municipal advisor by virtue of providing advice to such a vehicle, and that purchasing an interest in a vehicle does not create an advisory engagement between the investor and the vehicle's adviser.[395] This commenter suggested that, ''so long as there is at least one *bona fide* investor that is not a municipal entity or obligated person, the adviser to the vehicle should not be a municipal advisor.'' [396] The commenter also stated that not exempting advisors to pooled vehicles would particularly limit investment choices for public pension funds.[397]

[385] *See* Committee of Annuity Insurers Letter I.

[386] *See id.* The commenter explained that variable annuity contracts issued by its members are supported by insurance company separate accounts. Insurance company separate accounts could be limited to insurance contracts issued only to governmental retirement plans. The commenter noted that, if the Commission adopts its proposal to define municipal entity as including 457 plans and 403(b) plans, these insurance company separate accounts could then be viewed as pooled investment vehicles limited to municipal entity investors (*i.e.,* 457 plans and 403(b) plans). The commenter noted that the definition of investment strategies could be read to imply that an insurance company separate account, whose assets are limited to contributions from insurance contracts held by governmental retirement plans, is an investment strategy. The commenter stated that it has found no indication in the legislative history that Congress intended this result. The commenter noted that the funds invested in these insurance contracts are not proceeds of municipal securities, but rather employer and employee contributions. In the case of employee contributions from salary deduction arrangements, such salary funds are equity funds of the employees upon receipt, regardless of the source of those salaries, and thus are not proceeds of municipal securities.

[387] *See* Kutak Rock Letter.

[388] *See* 26 U.S.C. 148(a)(2) and Treas. Reg. § 1.148–1(e) (investment property definition).

[389] *See supra* Section III.A.1.b.viii. *See also* proposed Rule 15Ba1–1(b).

[390] *See* Proposal, 76 FR 830.

[391] *See id.,* at note 98.

[392] *See id.,* at 835.

[393] *See* American Bankers Association Letter I. This commenter urged the Commission to reiterate its position in the final rules and clarify that the interpretation applies to collective investment funds. A collective investment fund (''CIF'') is a bank-administered trust that holds commingled assets that meet specific criteria established by 12 CFR 9.18. The bank acts as a fiduciary for the CIF and holds legal title to the fund's assets. CIFs allow banks to avoid costly purchases of small lot investments for their smaller fiduciary accounts. *See* Office of the Comptroller of the Currency, Collective Investment Funds, available at *http://www.occ.treas.gov/topics/capital-markets/asset-management/collective-investment-funds/index-collective-investment-funds.html. The Commission notes that a CIF would have to contain no proceeds of municipal securities or fall within an exclusion or exemption to not require municipal advisor registration. See infra Section III.A.1.c.viii. (discussing the bank exemption).*

[394] *See* letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, dated February 22, 2011 (''MFA Letter'') (stating that ''imposing such an artificial threshold would create uncertainty for private fund managers, require burdensome, ongoing monitoring of the level of municipal entity investments, and limit or even prevent municipal entities from investing in private funds''). *See also* Kutak Rock Letter (suggesting that terminology involving the concept of ''municipal entities are the primary investors'' not be utilized, because ''it is too difficult to determine just what 'primary' means[,]'' and that too many difficult questions regarding an objective, numbers-based approach used to determine primary investorship would arise).

[395] *See* SIFMA Letter I.

[396] *Id.*

[397] *See id.* Specifically, the commenter stated that absent the suggested exemptions, fewer pooled investment vehicles would be offered to municipal entities (particularly public pension plans) and obligated persons, which would disserve municipal entities and obligated persons by limiting their access to important vehicles for the long-term investment of their funds. The commenter also stated that local government investment pools are

Continued

The Commission has carefully considered these comments and is not adopting its proposed interpretation of when a pooled investment vehicle will be considered to be funds held by or on behalf of a municipal entity. It is also not adopting an interpretation that would tie the determination of whether a person providing advice to a pooled investment vehicle is a municipal advisor, to whether municipal entities are the primary investors in the pooled investment vehicle. Instead, consistent with the narrowed approach that the Commission is adopting for ''investment strategies,'' the Commission is interpreting a pooled investment vehicle to be an investment strategy, and an advisor to such a pool to be a municipal advisor, when the pooled investment vehicle contains proceeds of an issuance of municipal securities, regardless of whether all funds invested in the vehicle are funds of municipal entities.[398] In such a case, an advisor to such a pooled investment vehicle will be required to register as a municipal advisor, unless an exclusion or exemption applies.

The Commission recognizes commenters' concerns that requiring advisors to pooled investment vehicles that include funds of municipal entities to register as municipal advisors could have the effect of limiting investment choices for municipal entities, including investment choices for public pension funds. As noted above, however, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.[399] Contrary to the construction under the proposed definition of ''investment strategies,''[400] under the definition of ''investment strategies'' as adopted and the exemption in Rule 15Ba1–1(d)(3)(vii), whether or not the funds invested in a pooled investment vehicle are considered to be ''funds held by or on behalf of a municipal entity'' does not determine whether a person providing advice to such a vehicle is required to register as a municipal advisor. Rather, under the rule as adopted, the determination of whether a person providing advice to a pooled investment vehicle is required to register as a municipal advisor depends upon the narrower inquiry of whether the funds in the pooled investment vehicle constitute ''proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.''[401] Also, the Commission notes that many advisors to pooled investment vehicles will be registered investment advisers or employees of municipal entities. Therefore, many advisors would or could be either exempted or excluded from registration as municipal advisors.[402] Moreover, the Commission believes that this approach to pooled investment vehicles appropriately focuses protection on those activities related to investment of the proceeds of municipal securities and related escrow investments, with respect to which there has been significant enforcement activity.[403]

One commenter expressed concern that pooled investment vehicles whose investors are limited to one or more municipal entities (*e.g.,* a government retirement pension plan) would be considered investment strategies under the Proposal.[404] This commenter suggested that the term ''investment strategies'' should not include insurance company's separate accounts supporting variable annuity contracts (and their underlying investment vehicles) offered to or held by municipal entities, even if the assets of the separate account are limited only to contributions from municipal entities.[405]

To the extent that an insurance company's separate accounts supporting variable annuity contracts offered to or held by municipal entities do not include ''proceeds of municipal securities,'' persons providing advice with respect to such accounts would not be required to register as municipal advisors because they would be exempt with respect to such municipal advisory activity.[406] Specifically, the Commission notes that, as a result of the exemption in Rule 15Ba1–1(d)(3)(vii) adopted today, a person providing advice with respect to investment strategies that are not ''plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments'' will be exempt from the definition of municipal advisor with respect to such activities. Further, the definition of ''proceeds of municipal securities'' is limited to the monies derived by a municipal entity from the sale of municipal securities, investment income derived from such monies, and other monies of a municipal entity (or obligated person) held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the debt service on the municipal securities, and investment income from the investment or reinvestment of such funds.[407] If, however, such separate accounts supporting variable annuity contracts offered to or held by municipal entities *do* include ''proceeds of municipal securities,'' advice with respect to such accounts would not be eligible for the exemption in Rule 15Ba1–1(d)(3)(vii) and such activity could be municipal advisory activity triggering the registration requirement.

x. 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 on behalf of specified persons.[408] Exchange Act Section 15B(e)(9) provides that the term ''solicitation of a municipal entity or obligated person''

often the only available option for the short-term investment of operating funds and are subject to state laws, which often include a fiduciary duty. The commenter stated that the Proposal likely would reduce the number of local government investment pool options available to municipalities.

[398] *See* Rule 15Ba1–1(d)(1) (defining ''municipal advisor'') and Rule 15Ba1–1(b) (defining ''investment strategies'' as including the statutorily identified items: ''plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments'').

[399] *See supra* Section III.A.1.b.viii. (discussing the exemption as it relates to the application of the statutory definition of ''investment strategies'').

[400] *See supra* note 389 and accompanying text.

[401] *See* Rule 15Ba1–1(b).

[402] *See infra* Sections III.A.1.c.v. and III.A.1.c.i. (discussing, respectively, the exclusion for registered investment advisers and their associated persons and an exemption for employees of municipal entities and obligated persons).

[403] *See supra* note 287.

[404] *See* Committee of Annuity Insurers Letter I.

[405] *See id.*

[406] *See* Rule 15Ba1–1(d)(3)(vii).

[407] *See supra* Section III.A.1.b.viii. (discussing the exemption pursuant to Rule 15Ba1–1(d)(3)(vii), and the terms ''investment strategies'' and ''proceeds of municipal securities'').

[408] *See* 15 U.S.C. 78*o*–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.'' Also, Section 15B(a)(1)(B), which establishes the registration requirement, specifically refers to solicitations of obligated persons. Notwithstanding the omission of the term ''obligated person'' in the definition of municipal advisor, the Commission interprets the definition of municipal advisor to include a person who engages in the solicitation of an obligated person acting in the capacity of an obligated person for the reasons discussed above. *See supra* note 138 and accompanying text.

See also supra note 178 (citing Chapman and Cutler Letter and discussing that an obligated person does not become a municipal entity by virtue of issuing securities with respect to which it is an 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.'' [409]

In connection with the statutory definition, the Commission discussed in the Proposal its interpretation of ''solicitation of a municipal entity or obligated person'' and stated in the Proposal 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.[410] The Commission noted that the determination of whether a solicitation of a municipal entity requires registration is not based on the number, or size, of investments that are solicited.[411] The Commission also specifically stated that the exclusion from the definition of municipal advisor for a broker-dealer serving as an underwriter would not apply to 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 fund.[412]

The Commission received approximately 14 comment letters regarding the definition of ''solicitation of a municipal entity or obligated person.'' As discussed in more detail below, a number of commenters requested further clarification regarding the statutory definition of, and the Commission's proposed interpretations of, that term. The Commission has carefully considered issues raised by commenters on its proposed interpretation and is adopting a rule [413] to define ''solicitation of a municipal entity or obligated person.'' The Commission's interpretation of ''solicitation of a municipal entity or obligated person'' in Rule 15Ba1–1(n) is substantially the same as its proposed interpretation, and includes certain clarifications discussed below designed to address commenters' concerns.[414] In addition, the Commission notes that, both in its proposed interpretation and adopted rule, a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser, soliciting on its own behalf, as explained below [415]—or an affiliate of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser soliciting on behalf of such entity—would not fall within the definition of ''solicitation of a municipal entity or obligated person.'' Accordingly, such person would not need to register as a municipal advisor.

Mailings, Advertisements, and Other General Information

Commenters stated that the Commission should explicitly exclude certain activities from the definition of solicitation of a municipal entity or obligated person. For example, one commenter recommended that ''generic 'mass mailing' solicitations, or institutional advertising'' should not be considered solicitation under the proposed rules, especially if such mass mailings are not targeted to a small group of particular municipal entities or obligated persons.[416] This commenter noted that the same argument would apply with respect to newspaper or periodical ads, brochures, TV, radio, or Internet ads.[417]

The Commission agrees with commenters that advertisements [418] or solicitations do not trigger an obligation for a third-party to register as a municipal advisor, provided such activity is undertaken by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser on behalf of itself as opposed to on behalf of a third party. Accordingly, the Commission is adopting Rule 15Ba1–1(n) with a clarification to address advertising and the scope of the rule with respect to solicitation of obligated persons.[419] Specifically, Rule 15Ba1–1(n), as adopted, clarifies that ''solicitation of a municipal entity or obligated person'' does not include ''advertising by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser.'' [420]

Assistance With Requests for Proposals

It is a relatively common industry practice for municipal entities to request that a financial advisor, bond counsel, or other market professional assist in the review of requests for proposals (''RFP'') for underwriter, financial advisory, or

[409] 15 U.S.C. 78*o*–4(e)(9).

The Commission notes that Rule 15Ba1–1(n) (which, as adopted, provides that the term ''solicitation of a municipal entity or obligated person'' has the same meaning as Section 15B(e)(9) of the Exchange Act, with certain exemptions) is only applicable with respect to whether or not a person meets the definition of municipal advisor and therefore will be required to register with the Commission (unless an exemption or exclusion applies). The Commission is not otherwise altering its interpretation of ''solicitation'' as used in other contexts.

As the Commission has explained, the Commission generally views solicitation, in the context of broker-dealers, as including any affirmative effort intended to induce transactional business. *See* Registration Requirements for Foreign Broker-Dealers, Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017–18 (July 18, 1989) (explaining that solicitation includes, among other things, calls encouraging use of a party to effect transactions).

[410] *See* Proposal, 76 FR 831. Thus, as stated in the Proposal, a third-party solicitor seeking business on behalf of an investment adviser from a municipal pension fund or LGIP would be required to register as a municipal advisor.

In addition, depending on the facts and circumstances, the third-party solicitor may also need to register as a broker-dealer pursuant to Section 15(a) of the Exchange Act. *See* 15 U.S.C. 78*o*(a)(1). *See also supra* note 409 (discussing solicitation in the context of broker-dealer regulation).

[411] *See* Proposal, 76 FR 831. As discussed in the Proposal, a solicitation of a single investment of any amount from a municipal entity would require the person soliciting the municipal entity to register as a municipal advisor.

[412] *See id.,* at 832, note 108 and accompanying text.

The Commission also noted that including such activities within the scope of municipal advisory activities is consistent with the Exchange Act. *See id.* (citing Exchange Act Sections 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); S. Rep. No. 176 at 148, 111th Cong., 2d. Sess. 148 (2010) (noting that Section 975 would not prohibit solicitation of a municipal entity, but would subject solicitors to the registration requirement and MSRB regulation); and 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).

[413] *See* Rule 15Ba1–1(n).

[414] *See id. See* notes 419–420 and 446–447, and accompanying text (discussing Rule 15Ba1–1(n)).

[415] *See* text accompanying *infra* note 418.

[416] *See* Kutak Rock Letter.

[417] *See id.*

[418] *See, e.g.,* FINRA Rule 2210(a)(5) (defining a ''retail communication'' as meaning ''any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period'').

[419] *See* Rule 15Ba1–1(n).

[420] *Id.*

The Commission notes, however, that while such communications would not trigger the requirement to register as a municipal adviser under the solicitation prong of the definition of ''municipal adviser,'' depending on the facts and circumstances, including the content of such communications, such activity may be considered to be advice for purposes of the registration requirement. *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

investment advisory services.[421] A person assisting a municipal entity or obligated person in selecting a broker-dealer, investment adviser, or financial advisor as part of an RFP process established by the municipal entity or obligated person would not be considered to be undertaking a solicitation for purposes of the definition of municipal advisor in Rule 15Ba1–1(d)(1), because such person would not be soliciting ''on behalf of'' such broker-dealer, investment adviser, or financial advisor.[422] Such person could, however, be engaging in other municipal advisory activities with respect to assistance in the selection process.[423]

Endorsement of Financial Products and Services by Associations

The Commission received approximately nine comment letters from various associations that endorse third parties offering products and services to the associations' members (''endorsement arrangements'').[424] According to commenters, in these endorsement arrangements, the third parties, which typically include investment advisers, broker-dealers, and mutual fund companies, compensate the associations or their for-profit subsidiaries through a royalty arrangement or through a marketing or sponsorship fee, depending on the association's level of involvement in providing information to its members.[425] The commenters expressed concern that the associations' compensated endorsement of investment advisory, municipal advisory, or broker-dealer businesses to their members, some of whom are municipal entities, could potentially be interpreted as solicitation of a municipal entity or obligated person.[426] Many of these commenters believed that the Proposal did not provide sufficient guidance about the statutory definition of ''solicitation.'' The statutory definition of solicitation includes ''direct or indirect communication with a municipal entity or obligated person,'' thus creating uncertainty regarding the possible inclusion of such endorsements.[427] One commenter noted that investment advisory, municipal advisory, or broker-dealer businesses that are endorsed by associations are not directed specifically at municipal entities, but rather are prepared and circulated without regard to whether the audience may include municipal entities.[428]

Two commenters recommended that the definition of solicitation exempt ''advertisement, endorsement, sponsorship, and similar services offered by persons who are not municipal advisors, brokers, dealers, municipal securities dealers, or similar persons engaged in the financial advisory service industry.''[429] One stated that compliance with the registration rules would create a significant administrative burden and would not create any material public benefits.[430] The other commenter requested that the Commission clarify the meaning of ''indirect communication'' within the definition of solicitation.[431] Similarly, other commenters stated that the Commission should exempt national and state associations representing state and local governments from municipal advisor registration.[432] These commenters argued that their staffs do not directly contact public employees or offer advice to public agencies or public employees.[433]

At this time, the Commission is not providing a general exemption for national and state associations that engage in endorsement arrangements. An organization that receives compensation for endorsing a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser is soliciting a municipal entity or obligated person within the meaning of the statute. However, the Commission notes that its interpretation in Rule 15Ba1–1(n) with respect to excluding advertising from ''solicitation of a municipal entity or obligated person'' may apply to some of these associations. For example, if an association's ''endorsement'' qualifies as ''advertising'' by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser, pursuant to Rule 15Ba1–1(n), it would not be required to register as a municipal advisor. Such a determination, however, would be based on the particular facts and circumstances.

The Commission does not believe at this time that it is appropriate to provide a blanket exemption to associations that are not able to take advantage of Rule 15Ba1–1(n), because these associations are being directly or indirectly compensated for recommending a broker, dealer, municipal advisor, or investment adviser to municipal entities or obligated persons. In addition, these associations may, in certain cases, be compensated in direct relation to the number of municipal entities that engage the endorsed product or service provider.

[421] For example, one commenter expressed concern that an investment adviser providing advice to a client regarding the selection or retention of another investment manager could constitute a solicitation of a municipal entity or obligated person under Section 15B(e)(9) of the Exchange Act. *See infra* note 705 and accompanying text.

[422] *See* Rule 15Ba1–1(n) (defining solicitation of a municipal entity or obligated person).

[423] *See infra* note 556 and accompanying text. *See also infra* Section III.A.1.c.ii. (discussing generally responses to RFPs and municipal advisor registration). Moreover, such activity may constitute investment advice under the Investment Advisers Act. *See, e.g., SEC* v. *Bolla,* 401 F.Supp.2d 43 (D.D.C. 2005), *aff'd in relevant part, SEC* v. *Washington Investment Network,* 475 F.3d 392 (D.C. Cir. 2007) (person selecting investment advisers for clients meets the Investment Advisers Act's definition of ''investment adviser'').

[424] *See, e.g.,* letters from James D. Campbell, CAE, Executive Director, Virginia Association of Counties, dated June 22, 2011 (''Virginia Association of Counties Letter''); Jeff Spartz, Executive Director, Association of Minnesota Counties, dated June 24, 2011 (''Association of Minnesota Counties Letter''); Robert Hay, Jr., Manager, Public Policy, ASAE Center for Association Leadership, dated July 8, 2011 (''ASAE Center for Association Leadership Letter''); Steven R. Michaud, President, Maine Hospital Association, dated July 14, 2011 (''Maine Hospital Association Letter''); Anthony Burke, President and CEO, AHA Solutions, Inc., dated July 18, 2011 (''AHA Solutions Letter''); Paul McIntosh, Executive Director, California State Association of Counties, dated July 29, 2011 (''California State Association of Counties Letter'').

[425] *See, e.g.,* ASAE Center for Association Leadership Letter.

[426] *See* ASAE Center for Association Leadership Letter and Maine Hospital Association Letter.

[427] *See* ASAE Center for Association Leadership Letter; Maine Hospital Association Letter; AHA Solutions Letter.

[428] *See* ASAE Center for Association Leadership Letter.

[429] *See* Maine Hospital Association Letter; AHA Solutions Letter.

[430] *See* Maine Hospital Association Letter.

[431] *See* AHA Solutions Letter.

[432] *See* Virginia Association of Counties Letter and California State Association of Counties Letter.

[433] *See* Virginia Association of Counties Letter and California State Association of Counties Letter.

These commenters stated that they do not directly or indirectly engage in the offer or sale of particular products or services to government employees, do not make any product or investment recommendations to existing or prospective clients, give any investment advice on their own behalf or on behalf of any third party supplier, or accept any clients on behalf of any third party supplier. These commenters also stated that the cost of registration and compliance, along with unknown consequences of state required registration due to the rules promulgated by the Commission, would unfairly disadvantage associations representing public agencies.

One of the commenters stated that such associations should receive an exemption in order to offer their membership access to value-added education and services through publicly solicited contracts. The commenter noted that associations representing non-governmental organizations are not required to register under the proposed rule and yet are able to endorse programs for their memberships that meet their standards of approval. *See* Virginia Association of Counties Letter.

Uncompensated Recommendations

Some commenters stated that the Exchange Act and the Proposal are unclear about when uncompensated recommendations might be deemed to be solicitations for purposes of the rule.[434] Several commenters stated that uncompensated recommendations should not be considered to be solicitations because the statutory text only refers to ''direct or indirect compensation.'' [435] One commenter stated further that, if uncompensated recommendations are interpreted to be solicitations, it ''will chill significantly the provision of information to municipal entities. . . .'' [436] Other commenters suggested that the solicitation prong should not apply if the municipal entity or obligated person requests an introduction.[437]

The Commission notes that an introduction is not necessarily a solicitation. Moreover, whether an introduction is a solicitation does not depend on whether a municipal entity or obligated person requests an introduction or the introduction is provided without request. Rather, for purposes of Rule 15Ba1–1(n), the solicitation determination is based on whether the person providing the introduction receives direct or indirect compensation for providing the introduction.[438] For example, a person could respond to a request from a municipal entity with a particular recommendation and then subsequently receive payment from the recommended entity. In this example, the solicitation would trigger the registration requirement.

The statutory definition of ''solicitation of a municipal entity or obligated person'' provides that the solicitation must be performed for ''direct or indirect compensation.'' [439] Thus, persons that are not compensated for soliciting a municipal entity or obligated person would not be required to register as municipal advisors. The Commission notes, however, that Commission staff has broadly construed the term ''direct or indirect compensation'' in other contexts.[440] In addition, as noted in the Proposal, other regulatory agencies have interpreted indirect compensation to include non-monetary compensation.[441]

Solicitation of Obligated Persons

Exchange Act Section 15B(e)(9) provides, in part, that the term ''solicitation of a municipal entity or obligated person'' is ''for the purpose of obtaining or retaining an engagement . . . of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products . . . .'' [442] One commenter asked the Commission to clarify that the meaning of ''municipal financial products'' with respect to the ''solicitation of an obligated person'' includes municipal derivatives, guaranteed investment contracts, and investment strategies of the municipal entity only, and not of the obligated person.[443] The commenter stated that obligated persons may include large entities with numerous and varied funds and investments, many of which may have nothing to do with the transactions pursuant to which they have become obligated persons.[444] In addition, the commenter stated that if the municipal advisor definition includes persons who advise obligated persons or solicit obligated persons with respect to the funds, securities, or investment strategies of the obligated person, ''the reach of the registration requirement would expand in potentially unpredictable ways.'' [445]

The Commission agrees with the comment that solicitation with respect to an obligated person applies only when an obligated person is acting in its capacity as an obligated person.[446] The Commission is, therefore, adopting Rule 15Ba1–1(n), which clarifies that, in the case of solicitation of an obligated person, the definition of ''solicitation of a municipal entity or obligated person'' does not include solicitation of an obligated person ''if such obligated person is not acting in the capacity of an obligated person or the solicitation of the obligated person is not in connection with the issuance of municipal securities or with respect to municipal financial products.'' [447]

As discussed above, with respect to the definition of obligated person, the Commission believes that the municipal advisor registration regime should apply in the same manner to advisors of obligated persons as to advisors of municipal entities.[448] The Commission further notes that, because they are committed by contract or other arrangement to support the payment of all or part of the obligations on municipal securities, obligated persons serve the same role as municipal entities with regard to municipal securities.[449] Therefore, pursuant to the Commission's clarification in Rule 15Ba1–1(n), a person soliciting an obligated person with respect to the issuance of municipal securities or municipal financial products will not meet the definition of municipal advisor as a result of such activity unless the obligated person is acting in its capacity as such.[450]

One commenter asked when a person should know whether he or she is soliciting an obligated person. Specifically, with respect to the application of the proposed rules to persons who undertake a solicitation of an obligated person, the commenter stated that a person should be considered to have engaged in such activities only when it has actual knowledge that it is (a) soliciting an obligated person, acting in its capacity as an obligated person, and (b) engaging in solicitation with respect to the issuance of municipal securities or proceeds of municipal securities.[451] Further, this commenter stated that a person must be rendering services with

[434] *See, e.g.,* letters from Joy A. Howard, Principal, WM Financial Strategies, dated February 21, 2011 (''Joy Howard WM Financial Strategies Letter''); John Dotson, Vice President and General Counsel, Chevron Energy Solutions, dated February 22, 2011 (''Chevron Letter''); Amy Natterson Kroll and W. Hardy Calcott, Bingham McCutchen LLP, on behalf of the National Association of Energy Service Companies, dated February 22, 2011 (''NAESCO Letter''); State of Indiana Letter.

[435] *See* Chevron Letter; NAESCO Letter.

[436] *See* NAESCO Letter.

[437] *See, e.g.,* letter from Deron S. Kintner, Executive Director, Indianapolis Local Public Improvement Bond Bank, dated February 22, 2011 (''Indianapolis Local Public Improvement Bond Bank Letter'') (stating that a person who solicits advice from individuals should be free to solicit advice and recommendations without having to either engage those individuals and compensate them or subject them to fiduciary duties).

[438] *See* Rule 15Ba1–1(n) and 15 U.S.C. 78*o*–4(e)(9) (which defines ''solicitation of a municipal entity or obligated person'' as ''a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation'' made on behalf of certain specified entities).

[439] *See* 15 U.S.C. 78*o*–4(e)(9).

[440] For example, under the Investment Advisers Act, Commission staff has taken the position that compensation generally includes the receipt of any economic benefit, whether in the form of an advisory fee, some other fee relating to services rendered, a commission, or some combination of the foregoing. *See* Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (October 8, 1987).

[441] *See* Proposal, 76 FR 832, note 113.

[442] 15 U.S.C. 78*o*–4(e)(9).

[443] *See* ABA Letter.

[444] *See id.*

[445] *Id.*

[446] The Commission also discusses above when a person is an ''obligated person.'' *See supra* Section III.A.1.b.iii.

[447] *See* Rule 15Ba1–1(n). The solicitation could require the solicitor to register with the Commission as a broker-dealer. *See generally* Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013 (July 18, 1989) (discussing solicitation).

[448] *See supra* note 227 and accompanying text.

[449] *See supra* Section III.A.1.b.iii.

[450] *See id.*

[451] *See* SIFMA Letter I.

respect to the types of activities or instruments that make a person a municipal advisor.[452] Lastly, the commenter suggested that a person need not affirmatively inquire as to the potential obligated person's status or the funds' status.[453]

The Commission believes that the commenter's suggestion, if adopted, would allow the municipal advisor registration regime to be too easily circumvented. An advisor could always argue that it did not have ''actual knowledge'' that it was soliciting an obligated person and therefore is not subject to regulation. The Commission instead believes that a person that is soliciting an obligated person should make a reasonable inquiry to a person in a position to know as to whether it is soliciting for services related to the issuance of municipal securities or municipal financial products, and whether the person being solicited is an obligated person. For example, a person may rely on the written representation of the obligated person, unless such person has information that would cause a reasonable person to question the accuracy of the representation.[454] In such a case, a person could not ignore the information and would need to make further reasonable inquiry to verify the accuracy of the representation.[455]

Other Exclusions and Exemptions From the Definition of ''Solicitation of a Municipal Entity or Obligated Person''

Some commenters stated that the Commission should explicitly exclude certain entities from the solicitation definition altogether. For example, several commenters stated that placement agents for pooled investment vehicles should not be considered solicitors.[456] Another commenter recommended that an investment adviser's employees who solicit municipal entities as part of their regular responsibilities should not be considered solicitors.[457] The Commission has carefully considered issues raised by commenters and has determined not to provide specific exemptions from the definition of ''solicitation of a municipal entity or obligated person.''[458]

Section 15B(e)(4)(A) of the Exchange Act states that the definition of municipal advisor includes a person that undertakes a solicitation of a municipal entity.[459] Section 15B(e)(4)(B) of the Exchange Act states that the definition of municipal advisor includes a number of listed types of market participants (specifically financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors) if such persons otherwise meet the definition of a municipal advisor under Exchange Act Section 15B(e)(4)(A). In relevant part, Exchange Act Section 15B(e)(4)(A)(ii) provides that a municipal advisor includes a person that, on behalf of certain types of third-parties, undertakes a solicitation of a municipal entity to engage such parties to perform certain specified activities.[460] In the case of placement agents, the Commission agrees with commenters that a placement agent for a pooled investment vehicle that is not a municipal entity (*e.g.,* a hedge fund or mutual fund) and that ''solicits'' a municipal entity to invest in the fund does not, with respect to such activity, meet the statutory definition of the term ''solicitation of a municipal entity or obligated person'' in Exchange Act Section 15B(e)(9). Such a placement agent does not meet the statutory definition of the term because it is not soliciting on behalf of a third-party broker, dealer, municipal securities dealer, municipal advisor, or investment adviser to obtain or retain an engagement by a municipal entity or obligated person of such third-party broker, dealer, municipal securities dealer, municipal advisor, or investment adviser. Whether the placement agent otherwise meets the definition of ''municipal advisor'' with respect to any activity related to or in connection with its ''solicitation'' activity (that does not, as discussed above, meet the statutory definition of solicitation in Exchange Act Section 15B(e)(9)) would depend on the facts and circumstances.[461] By contrast, a placement agent that undertakes a solicitation of a municipal entity for the purpose of obtaining an engagement by the municipal entity of an unaffiliated investment adviser to provide investment advisory services to the municipal entity is a municipal advisor because it is soliciting on behalf of an unaffiliated adviser to provide investment advisory services.[462] The Commission also agrees with commenters that employees of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that solicit municipal entities as part of their regular duties on behalf of their employer or an affiliate of such employer are not municipal advisors, if they are acting within the scope of their employment. Specifically, as provided in Exchange Act Section 15B(e)(9), the term ''solicitation of a municipal entity or obligated person'' means, in part, ''a direct or indirect communication with a municipal entity or obligated person made by a person . . . 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 . . . .''[463] As such, the term applies only to third-party solicitors, and not to an entity acting on its own behalf or on behalf of its affiliate. Employees acting in their capacity as such on behalf of their

[452] *See id.*

[453] *See id.*

[454] See Rule 15Ba1–1(m). Also, a person would only be a municipal advisor as a result of soliciting an obligated person when such obligated person is acting in the capacity of an obligated person. *See supra* note 446 and accompanying text.

[455] *See also supra* Section III.A.1.b.viii. at note 363 and accompanying text (discussing the requirement to know when advice relates to the proceeds of municipal securities).

[456] *See, e.g.,* SIFMA Letter I (stating that Section 975 of the Dodd-Frank Act does not define ''solicitation'' to include solicitation of a municipal entity or obligated person by a placement agent for a pooled investment vehicle, such as a private equity fund, hedge fund, LGIP, or mutual fund, all of which involve the sale of securities by registered broker-dealers); ICI Letter (stating that a ''placement agent soliciting a municipal entity to invest in a pooled investment vehicle acts on behalf of the pooled investment vehicle only, not on behalf of the adviser to the vehicle nor on behalf of any of the other four enumerated categories of persons contained in the definition'').

[457] *See* letter from Monique S. Botkin, Assistant General Counsel, Investment Adviser Association, dated February 22, 2011 (''IAA Letter'') (stating that ''[i]t would be illogical and contravene the statutory intent of the Dodd-Frank Act for such an exclusion to apply to an affiliate of an investment adviser and its employees soliciting on behalf of its affiliated adviser, but not for the same analysis to apply to an investment adviser and its own employees soliciting on their employer's behalf'').

[458] *See infra* note 465 and accompanying text.

[459] *See* Exchange Act Section 15B(e)(9). *See also* Rule 15Ba1–1(n).

[460] *See supra* note 409 and accompanying text (setting forth the definition of ''solicitation of a municipal entity or obligated person'').

[461] *See infra* notes 625–629 and accompanying text (discussing when a placement agent may be a municipal advisor and when it may, or may not, qualify for the exclusion for underwriters).

[462] With respect to solicitations on behalf of investment advisers, the relevant portion of the definition of a ''solicitation of a municipal entity or obligated person'' in Exchange Act Section 15B(e) limits the scope of covered solicitations to those involving solicitations for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person ''of an investment adviser to provide investment advisory services to or on behalf of a municipal entity.'' *See also* S. Rep. No. 111–176 at 148 (2010) (''Rather than effectively prohibiting such third-party solicitation for investment advisory services, this section would provide that activities of a municipal advisor, broker, dealer, or municipal securities dealer to solicit a municipal entity to engage an unrelated investment adviser to provide investment advisory services to a municipal entity . . . would be subject to regulation by the MSRB.'')

[463] 15 U.S.C. 78*o*–4(e)(9).

employer are acting as the agent of their employer and, consequently, are not third-party solicitors that fall within the definition of municipal advisor as a result of their solicitation activity.

Pursuant to Rule 15Ba1–1(d)(3)(viii) and consistent with the exemption from the definition of municipal advisor under Rule 15Ba1–1(d)(3)(vii) for a person that provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments,[464] the Commission is exempting from the definition of municipal advisor under Rule 15Ba1–1(d)(1) any person that undertakes a ''solicitation of a municipal entity or obligated person'' (as defined in Rule 15Ba1–1(n) (17 CFR 240.15Ba1–1(n)) for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products that are investment strategies, to the extent that such investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.[465] As with respect to the exemption in Rule 15Ba1–1(d)(3)(vii), the Commission believes that the exemption in Rule 15Ba1–1(d)(3)(viii) is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, because the exemption tailors protection of municipal entities to those activities related to the investment of the proceeds of municipal securities and related escrow investments.[466]

Marketing of Insurance Contracts

One commenter stated that solicitation should not include the marketing of insurance contracts by broker-dealers to retirement plans established by municipal entities.[467] The Commission agrees that the marketing of insurance contracts by broker-dealers is not solicitation for purposes of the municipal advisor definition if it is not performed on behalf of a third-party broker, dealer, investment adviser, municipal securities dealer, or municipal advisor. As described above, the definition of ''solicitation of a municipal entity or obligated person'' only applies to third-party solicitations on behalf of these specific kinds of entities.[468]

c. Exclusions and Exemptions From the Definition of ''Municipal Advisor''

In addition to the exemption described above for persons providing advice or soliciting engagements with respect to certain financial products, the Commission discusses below its interpretations of certain statutory exclusions, as well as specific activities-based exemptions it is granting from the definition of ''municipal advisor.'' [469] Also, the Commission discusses below exemptions of general applicability to the extent a person is responding to an RFP or a request for qualifications (''RFQ'') or to the extent a municipal entity or obligated person is otherwise represented by a registered municipal advisor, subject to certain conditions.

i. Public Officials and Employees of Municipal Entities and Obligated Persons

Exchange Act Section 15B(e)(4)(A) provides that the term ''municipal advisor'' excludes employees of a municipal entity.[470] As noted in the Proposal, one commenter suggested that the Commission clarify that this exclusion 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.[471] This commenter stated that, because these persons are not technically ''employees'' of the municipal entity (but rather ''unpaid volunteers''), they would not fall within the exclusion from the definition of municipal advisor for ''employees of a municipal entity.'' [472]

The Commission stated in the Proposal that the exclusion from the definition of municipal advisor for ''employees of a municipal entity'' should include any person serving as an elected member of the municipal entity's governing body to the extent that the person is acting within the scope of his or her role as an elected member. The Commission also stated that ''employees of a municipal entity'' should include a governing body's appointed members to the extent such appointed members are *ex officio* members by virtue of holding an elective office.[473] The Commission stated its concern that appointed members are not directly accountable for their performance to the citizens of the municipal entity.[474]

In the Proposal, the Commission requested comment on: (1) Whether there are 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; (2) whether ''employees of a municipal entity'' should include elected members of a governing body of a municipal entity, and appointed members of a municipal entity's governing body to the extent such appointed members are *ex officio* members of the governing body by virtue of holding an elective office, is appropriate; and (3) whether there are other persons associated with a municipal entity who might not be ''employees'' of a municipal entity but that the Commission should exclude from the definition of municipal advisor.[475]

The Commission received over 600 comment letters on its interpretation of ''employee of a municipal entity.'' Commenters represented a wide array of individuals and entities, including representatives of: city and state governments; [476] city and state retirement systems; [477] state university

[464] *See supra* Section III.A.1.b.viii.

[465] *See* Rule 15Ba1–1(d)(3)(viii).

[466] *See* note 328 and accompanying text.

[467] *See* Committee of Annuity Insurers Letter I.

[468] *See supra* note 463 and accompanying text. *See also* Rule 15Ba1–1(n).

[469] For the exclusions and exemptions that were discussed in the Proposal and that the Commission is adopting today, the Commission has made minor, non-substantive changes to provide greater clarity and consistency throughout the rules related to exclusions and exemptions.

[470] 15 U.S.C. 78*o*–4(e)(4)(A).

[471] *See* Proposal, 76 FR 834, n.140 and accompanying text (citing letter from John P. Wagner, Kutak Rock LLP, to Elizabeth M. Murphy, Secretary, Commission, dated September 28, 2010).

[472] *See id. See also* 15 U.S.C. 78*o*–4(e)(4)(A).

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

[474] *See* Proposal, 76 FR 834.

[475] *See* Proposal, 76 FR 837.

[476] *See, e.g.,* letter from Stevan Gorcester, Association of Washington Cities, dated February 22, 2011; letter from William G. Dressel, Jr., Executive Director, New Jersey League of Municipalities, dated January 27, 2011; letter from Ken Miller, Oklahoma State Treasurer, dated February 7, 2011; letter from Steve Ritter, Assistant Finance Director, City of Huntsville, Texas, dated January 10, 2011; letter from Jim D. Dunaway, City Manager, City of Taylor, Texas, dated January 13, 2011; letter from Jacqueline M. Kovilaritch, Assistant City Attorney, City of St. Petersburg, Florida, dated January 19, 2011 (''City of St. Petersburg Letter''); letter from Judith Hetherly, Mayor, City of Lampasas, Texas, dated January 20, 2011; letter from Gary Herbert, Governor, State of Utah, Salt Lake City, Utah, dated February 17, 2011; and National Association of State Treasurers Letter.

[477] *See, e.g.,* Utah Retirement Systems Letter; letter from R. Dean Kenderdine, Executive Director and Secretary to the Board, Maryland State Retirement and Pension System, dated February 17, 2011; letter from Ann Fuelberg, Executive Director, Employees Retirement System of Texas, dated February 18, 2011; letter from Anthony B. Ross, Chairperson and Stephen C. Edmonds, Executive Director, City of Austin Employees Retirement System, dated February 18, 2011; and Alaska Retirement Management Board Letter.

systems;[478] state housing, development, and port authorities;[479] city transit authorities;[480] special districts (such as healthcare, water, sanitation, and other districts);[481] public utility boards and associations;[482] airports, and airport authorities and commissions;[483] and individual volunteer or appointed board members.[484]

The comments dealt predominantly with the Commission's proposed view that ''employees of a municipal entity'' should include elected members of a municipal entity's governing body, and appointed members, to the extent such appointed members are *ex officio* members of the governing body by virtue of holding an elective office. Many commenters asserted that the Commission's proposed interpretation of municipal advisor is overly broad or overreaching and should exclude all members of a municipal entity's governing board.

The majority of commenters stated, in particular, that appointed board members should not be treated differently from elected board members or officials and disagreed with the Commission's statement that appointed board members are not directly accountable. Many of the commenters asserted that state and local laws applicable to officials of a municipal entity do not distinguish between appointed or elected members and that all members are subject to the same legal obligations, including fiduciary duties, codes of conduct, open meeting laws, and conflicts of interest and ethics laws.[485] For example, commenters asserted that appointed officials of municipal non-profit corporations, trusts, and pension funds have a duty to act in the interests of the corporation, trust, or the fund.[486] Many commenters also asserted that appointed board members are accountable to the elected officials that appointed them or for whom they work.[487] Many also noted that appointed board members may be removed for cause[488] and are subject to civil suit.[489] Others observed that appointed board members are more accountable than elected officials.[490]

Additionally, many commenters asserted that board members are the decision and policy makers who receive advice from third parties who are paid for providing services and that board members themselves are not

[478] *See, e.g.,* letter from Frank T. Brogan, Chancellor, State University System of Florida, dated February 21, 2011; letter from Calvin J. Anthony, Chairman, Oklahoma State University/Agricultural and Mechanical Colleges Board of Regents, dated January 7, 2011 (''Oklahoma State University/Agricultural and Mechanical Colleges Board of Regents Letter''); letter from Francisco G. Cigarroa, M.D., Chancellor, The University of Texas System, dated February 7, 2011; letter from Michael D. McKinney, Chancellor, The Texas A&M University System and Kent Hance, Chancellor, Texas Tech University System, dated February 14, 2011; letter from Richard D. Legon, President, Association of Governing Boards of Universities and Colleges, dated February 15, 2011; letter from Dr. Brian McCall, Chancellor of the Texas State University System, dated February 17, 2011; and letter from Peter J. Taylor, Executive Vice President—Chief Financial Officer, The Regents of the University of California, dated February 18, 2011 (''UCLA Regents Letter'').

[479] *See, e.g.,* letter from Rebecca L. Peace, Chief Counsel, Pennsylvania Housing Finance Agency, Jayne B. Blake, Chief Counsel, Pennsylvania Infrastructure Investment Authority, Stephen M. Drizos, Executive Director, Pennsylvania Economic Development Financing Authority, Carol A. Longwell, Deputy Chief Counsel, Pennsylvania Economic Development Financing Authority, and Doreen A. McCall, Chief Counsel, Pennsylvania Turnpike Commission, dated February 15, 2011 (''Pennsylvania Housing Finance Agency Letter''); and letter from Tracy V. Drake, Chairman, Ohio Council of Port Authorities and CEO, Columbiana County Port Authority, dated February 4, 2011.

[480] *See, e.g.,* letter from Carol B. Keefe, General Counsel, Washington Metropolitan Area Transit Authority, Washington, District of Columbia, dated February 14, 2011; and letter from David Levinger, Chief Financial Officer, Dallas Area Rapid Transit, dated February 22, 2011.

[481] *See, e.g.,* letter from John ''Chip'' Taylor, Executive Director, Colorado Counties Inc., Sam Mamet, Executive Director, Colorado Municipal League, and Ann Terry, Executive Director, Special District Association of Colorado, dated January 26, 2011; letter from Kathleen Durham, Chairman, South Broward Hospital District, dated February 8, 2011; letter from James F. Heekin, Counsel, Citrus County Hospital Board, Southeast Volusia Hospital District, West Orange Healthcare District, February 14, 2011; letter from Walt Sears, Jr., General Manager, Northeast Texas Municipal Water District, dated January 24, 2011; and letter from Robert M. Ball, A. A. E., Executive Director, Lee County Port Authority, dated February 18, 2011; and letter from Edward G. Henifin, General Manager and Steven G. deMik, Director of Finance, Hampton Roads Sanitation District, dated February 22, 2011.

[482] *See, e.g.,* letter from David Modisette, California Municipal Utilities Association, dated February 22, 2011; letter from John S. Bruciak, Brownsville Public Utilities Board, dated February 18, 2011; letter from David H. Wright, City of Riverside, dated February 23, 2011; and letter from Susan N. Kelly, Senior Vice President of Policy Analysis and General Counsel and Diane Moody, Director, Statistical Analysis, American Public Power Association, dated February 22, 2011 (''American Public Power Association Letter'').

[483] *See, e.g.,* letter from Jeffery P. Fegan, Chief Executive Officer, Dallas/Fort Worth International Airport, dated January14, 2011, letter from Phillip N. Brown, A.A.E., Executive Director, Greater Orlando Aviation Authority, dated February 8, 2011; letter from Emily Neuberger, Senior Vice President & General Counsel, Wayne County Airport Authority, Michigan, dated February 14, 2011 (''Wayne County Airport Authority Letter''); letter from Elaine Roberts, President & CEO, Columbus Regional Airport Authority, dated February 16, 2011; letter from Thomas W. Anderson, General Counsel, Metropolitan Airports Commission, dated February 17, 2011; and letter from Breton K. Lobner, General Counsel, San Diego County Regional Airport Authority, dated February 22, 2011.

[484] *See, e.g.,* letter from Richard R. Vosburg, Chartered Financial Analyst, Germantown, Tennessee, dated January 24, 2011 (''Vosburg Letter''); and letter from William Dalton, dated February 28, 2011 (''Dalton Letter'').

[485] *See, e.g.,* Darrell Buchbinder, The Port Authority of New York and New Jersey, dated February 18, 2011; National Association of State Treasurers Letter; Letter from Martin R. Hopper, General Manager, M–S–R Public Power Agency, dated February 18, 2011 (''M–S–R-Power Agency Letter''); letter from Meredith J. Jones, NYCEDC, dated February 18, 2011 (''NYCEDC Letter''); and UCLA Regents Letter; letter from Laura King, Minnesota State Colleges and Universities, dated February 22, 2011.

Many of these commenters also explained that certain municipal entity governing boards are established or operating pursuant to state or local statute. *See id. See also* letter from JoAnn E. Levin, Chief Solicitor, City of Baltimore, dated February 3, 2011; and letter from Mark Page, Director of Management and Budget, The City of New York, dated February 22, 2011 (''NYC Management and Budget Letter'').

[486] *See, e.g.,* letter from Acting Governor Earl Ray Tomblin, Chairman of the Board; Glen B. Gainer, Auditor of the State of West Virginia and Roger Hunter, Chairman of the Investment Committee, and Guy Bucci, Chairman of the Legal Committee, West Virginia Investment Management Board, dated February 22, 2011; and letter from Joanne Handy, President and CEO, Aging Services of California, dated February 22, 2011; letter from Charles R. Noll, President, Pennsylvania Local Government Investment Trust, dated February 18, 2011 (''Pennsylvania Local Government Investment Trust Letter''); letter from Keith Bozarth, Executive Director, State of Wisconsin Investment Board, dated February 22, 2011; and letter from Peter H. Mixon, California Public Employees' Retirement System, dated February 22, 2011 (''CALPERS Letter'').

[487] *See, e.g.,* letter from John Murphy, Executive Director, National Association of Local Housing Finance Agencies, dated January 27, 2011; NYC Management and Budget Letter; and letter from Bob A. Newmark, Housing Finance Authority, dated February 11, 2011.

[488] *See, e.g.,* letter from Gottlieb Fisher PLLC, on behalf of the Boards of Trustees for King County Rural Library District, Fort Vancouver Intercounty Rural Library District, Pierce County Rural Library District LaConner Rural Partial-County Library District, Sno-Isle Intercounty Rural Library District, Spokane County Rural Library District, Walla Walla County Rural Library District, and Whitman County Rural Library District, dated February 11, 2011 (''Gottlieb Fisher Letter''); letter from Linda Beaver, Nebraska Educational Finance Authority, dated February 16, 2011 (''Nebraska Educational Finance Authority Letter''); Alaska Retirement Management Board Letter; Robert W. Barnes, Idaho Falls Redevelopment Agency, dated February 18, 2011; and letter from Jeffrey W. Letwin, Esq., Partner, Schnader Harrison Segal Lewis LLP, Pittsburgh, Pennsylvania, dated February 8, 2011.

[489] *See, e.g.,* letter from Jeffrey W. Letwin, Esq., Partner, Schnader Harrison Segal Lewis LLP, Pittsburgh, Pennsylvania, dated February 8, 2011; letter from Gary Kimball, President, Specialized Public Finance, Inc., dated February 22, 2011 (''Specialized Public Finance Letter''); letter from Gary Parsons, General Manager, Texas Municipal Power Agency, dated February 22, 2011 (''Texas Municipal Power Agency Letter''); and letter from John W. Rubottom, General Counsel, Lower Colorado River Authority, dated February 15, 2011.

[490] *See, e.g.,* letter from Bill Lockyer, Treasurer, State of California, dated February 22, 2011 (''California State Treasurer's Office Letter''); Texas Municipal Power Agency Letter; letter from John D. Clark, III, Executive Director/CEO, Indianapolis Airport Authority, dated February 22, 2011; and letter from Victor Vandergriff, Chairman, North Texas Tollway Authority, dated February 11, 2011.

''advisors.'' [491] Many commenters asserted that members of governing boards are the intended beneficiaries of the proposed regulation.[492] Further, some commenters asserted that the Proposal would usurp state laws governing duties and responsibilities of appointed board members of municipal entities.[493] Many commenters also stated that, in its current form, the Proposal would deter much needed citizen volunteers from serving on governing boards of municipal entities or would chill the deliberative process of such boards. These commenters reasoned that volunteers would fear that their participation in votes on, or discussions of, financial matters will be deemed ''advice'' that would subject them to registration.[494]

Commenters also stated that the Proposal is unclear with respect to whether: (1) Appointed, rather than elected, officials (such as city controllers, managers, and commissioners) would be ''employees;'' [495] (2) the employee of one municipal entity (such as an employee of a municipal entity that is the sponsor of a pension plan) would be covered by the exclusion when serving as an appointed member of the board of another municipal entity (such as on the board of the sponsored pension plan) or otherwise performing services for other related municipal entities; [496] and (3) board members that were ''elected,'' but were not elected by the citizens of the municipal entity, would be considered ''employees of a municipal entity.'' [497] Some commenters stated that designees of board members should also be covered by the exclusion.[498] One commenter suggested that ''employees and board members of a municipal entity should be excluded [from the definition of municipal advisor] to the extent they provide advice to an obligated person (and acting in the purview of their duties).'' [499]

Many commenters also stated that boards of municipal entities are legally inseparable from the municipal entity.[500] One commenter stated that if the governing body of a municipal entity, as a whole, is not a part of the ''municipal entity,'' then any third party soliciting or providing advice to the governing body with respect to municipal financial products or the issuance of municipal securities would not be subject to the registration requirements.[501]

Additionally, some commenters asserted that the Proposal would restrict municipal entities from soliciting advice from citizens, and would subject to the registration requirements members of the general public submitting written comments or giving oral statements to the board of a municipal entity.[502] Another commenter stated that the Proposal would require registration of a former board member, if the Chairman of the current board contacts that former board member with questions about a prior issuance.[503]

After considering the comments, the Commission has determined to exempt from the definition of municipal advisor, pursuant to its authority under Section 15B(a)(4), all members of a municipal entity's governing body, its advisory boards and its committees, as well as persons serving in a similar official capacity with respect to the municipal entity, to the extent they are acting within the scope of their official capacity, regardless of whether such members or officials are employees of the municipal entity. Specifically, Rule 15Ba1–1(d)(3)(ii) exempts from the definition of municipal advisor ''[a]ny

[491] *See, e.g.,* letter from Michael D. Nosler, General Counsel and Assistant Attorney General, Colorado State University System, dated February 21, 2011; letter from Barbara J. Thompson, Executive Director, National Council of State Housing Agencies, dated February 22, 2011; letter from Luther Strange, Attorney General, State of Alabama, dated February 22, 2011; CALPERS Letter; letter from Ronnie G. Jung, Executive Director, Teacher Retirement System of Texas, dated February 22, 2011; Stephanie L. Hamlett, Executive Director, Virginia Resources Authority, dated February 22, 2011; and Dalton Letter.

[492] *See, e.g.,* letter from David R. Fine, City Attorney, Denver, dated February 9, 2011 (''Denver Letter''); letter from James F. Zay, Chairman, Du Page Water Commission, dated February 11, 2011; letter from Angela I. Carmon, City Attorney, City of Winston-Salem, North Carolina, dated February 14, 2011; letter from David J. Kincaid, City Manager, City of Safford, Arizona, dated February 14, 2011 (''City of Safford Letter''); and letter from Donald Dicklich, County Auditor-Treasurer, Duluth, Minnesota, dated February 16, 2011.

[493] *See, e.g.,* letter from Steven J. Baumgardt, Finance Director, City of Tolleson, Arizona, dated March 3, 2011 (''City of Tolleson Letter''); letter from Joe Pizzillo, Vice Mayor, City of Goodyear, Arizona, dated February 14, 2011 (''City of Goodyear Letter''); letter from Patricia Branya, Director, Miami-Dade County, dated February 14, 2011; and letter from Elwood G. ''Woody'' Farber, President, New Mexico Educational Assistance Foundation, dated February 15, 2011. One commenter questioned whether, if an appointed member of a governing body is deemed a municipal advisor, the federal fiduciary obligations to the municipal entity override state and local law provisions for exculpation, indemnification, and other protections of board members. *See* NABL Letter.

[494] *See, e.g.,* City of Tolleson Letter; City of Goodyear Letter; letter from Richard D. Legon, President, Association of Governing Boards of Universities and Colleges, dated February 15, 2011; letter from Edward G. Henifin, General Manager and Steven G. deMik, Director of Finance, Hampton Roads Sanitation District, dated February 22, 2011; letter from Scott Jordan, Executive Office for Administration and Finance, dated February 22, 2011; letter from Granger Vinall, Chairman of the Board of Directors and Kevin J. Burns, Chief Executive Officer, UA Healthcare, Inc., dated February 22, 2011; and letter from Ronald H. Paydo, President, Medina County Port Authority, dated February 18, 2011.

[495] *See, e.g.,* Cynthia M. Davenport, Attorney at Law, Flynn & Davenport, LLC, Troy, Missouri, dated January 18, 2011; City of St. Petersburg Letter; Denver Letter; and City of Safford Letter.

[496] *See, e.g.,* letter from Michael Hairston, EFRC, dated February 22, 2011; NYC Management and Budget Letter; M–S–R-Power Agency Letter (explaining that the M–S–R Public Power Agency uses the services of employees of its member municipal entities to sit on standing committees of the agency and to fulfill the duties of offices of the agency; and commenting that employees of its members that are seconded to the agency should have the same exemption when they perform services for the agency as when the employees are acting within the scope of their employment responsibilities providing services for the benefit of the member entity); letter from Hawkins Delafield & Wood LLP, dated February 16, 2011 (commenting that ''an employee of municipal entity A who provides services to, but is not an employee of, municipal entity B, should be exempt under Section 15B(e)(4)(A) if both entities operate for the benefit of the same governmental unit, whether at the state, county, or municipal level''); letter from Susan Combs, Texas Comptroller of Public Accounts, dated February 22, 2011 (describing that employees of Texas's Office of the Comptroller may provide advice to other municipal entities within the state in connection with their duties to the Office of the Comptroller); and letter from Amadeo Saenz, Texas Department of Transportation, dated February 22, 2011 (commenting that employees of the Texas Department of Transportation that are appointed to the non-profit entity that issues bonds on behalf of the Texas Transportation Commission should be excluded because they are employees assuming a decision-making responsibility based on the duties of their employment).

One commenter also stated that the Proposal is unclear, in the case of a non-profit entity formed for the benefit of a municipal entity, whether employees of the municipal entity that sit on the board of such non-profit would be excluded from the definition of ''municipal advisor'' as ''employees'' of the municipal entity. *See, e.g.,* letter from Angela I. Carmon, City Attorney on behalf of North Carolina Municipal Leasing Corporation, dated February 22, 2011.

The term ''municipal entity'' means, in part, ''any State, political subdivision of a State, or corporate instrumentality.'' *See* Rule 15Ba1–1(g). The Commission notes that such employees would be ''employees of a municipal entity,'' and therefore excluded from the definition of municipal advisor, to the extent the non-profit entity is itself a municipal entity (*e.g.,* if the non-profit entity is a corporate instrumentality of a State).

[497] *See, e.g.,* Pennsylvania Local Government Investment Trust Letter.

[498] *See, e.g.,* NYC Management and Budget Letter; and letter from Tim Kenny, Nebraska Investment Finance Authority, dated February 22, 2011.

[499] Kutak Rock Letter. This commenter was concerned that otherwise, the municipal entity and obligated person would not be able to coordinate with respect to a financing for the obligated person.

[500] *See, e.g.,* Utah Retirement Systems Letter; Nebraska Educational Finance Authority Letter; State of Indiana Letter; NABL Letter; and letter from Gregory W. Smith, General Counsel/Chief Operating Officer, Colorado Public Employees' Retirement Association, dated February 22, 2011.

[501] *See* Utah Retirement Systems Letter.

[502] *See, e.g.,* letter from Annise D. Parker, Mayor, City of Houston, Texas, dated February 22, 2011; Squire Sanders & Dempsey Letter.

[503] *See* Indianapolis Local Public Improvement Bond Bank Letter.

person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person [504] to the extent that such person is acting within the scope of such person's official capacity'' [505] and ''any employee of a municipal entity or obligated person to the extent that such person is acting within the scope of such person's employment.'' [506]

The Commission agrees with commenters that like employees, a municipal entity's officials, as well as members of a municipal entity's governing body and other officials serving in a similar capacity (including members of advisory boards and committees), whether or not employed by a municipal entity, typically act on behalf of the municipal entity. The Commission also believes that if a local government official or appointed board member of a municipal entity, in the scope of his or her duties to that municipal entity, provides advice to another municipal entity, such advice would not require the person to register as a municipal advisor because such person would be acting within the scope of his or her duties to the municipal entity. Rule 15Ba1–1(d)(3)(ii) also clarifies the Commission's interpretation of the statutory exclusion from the definition of ''municipal advisor'' for employees of municipal entities by providing that such employees are exempt ''to the extent that such person is acting within the scope of such person's employment.'' [507] Consequently, as described above with respect to governing board members and officials, an employee of one municipal entity that provides advice, within the scope of his or her employment as such, to another municipal entity or obligated person would be exempt from the definition of ''municipal advisor.''

The exemption in Rule 15Ba1–1(d)(3)(ii) would extend to all designees of public officials or members of a municipal entity's governing body, to the extent such designation is made pursuant to existing rules of the municipal entity for designating or delegating authority. The Commission believes that under such scenario, the designee would be serving ''in a similar official capacity'' [508] as the person for whom they are acting. Further, the Commission notes that the exemption from registration includes members of advisory boards [509] and committees,[510] acting within the scope of their capacity as such [511] because, as with respect to members of the governing body or other government officials, when acting within the scope of their official capacity such persons are acting on behalf of the municipal entity.

The Commission does not intend to impede the deliberative process that municipal entities engage in with their citizens. Accordingly, the registration requirement for municipal advisors does not apply to persons who comment on municipal financial products or the issuance of municipal securities by making use of public comment forums provided by municipal entities or other public forums. Additionally, responding to factual questions about a past issuance by a former board member would not constitute municipal advisory activities, because providing such information in response to questions under such circumstances is factual and therefore does not constitute advice with respect to such issuance.[512]

The Commission agrees with commenters that individuals who engage in deliberative and decision-making functions with respect to municipal financial products or the issuance of municipal securities as part of their duties as members of a governing body should not have to register as municipal advisors. Such individuals represent the municipal entity that is the intended recipient of the protections of the municipal advisor registration regime, and the Commission does not consider such deliberative and decision-making functions to be advice. Additionally, board members and other officials (appointed and elected alike, as well as their duly appointed designees) may be subject to state and local law, including fiduciary duties and ethics laws, and the statutory qualifications for such members' board positions may be significant to the mission of the municipal entity. Accordingly, the Commission does not believe that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors,[513] would provide a significant additional benefit. The Commission agrees with commenters that whether a public official or other member of a governing body of a municipal entity is appointed or elected is not the sole factor in determining whether such individual is accountable to the municipal entity he or she serves. Board members, officials, and employees would be required to register, however, if they are engaged by other municipal entities or obligated persons to provide services as compensated advisors in addition to their normal duties as an employee, official, or board member of the municipal entity.[514]

For the reasons described above, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity to the extent that such person is acting within the scope of such person's official capacity.[515] Accordingly, such persons are not required to register as municipal advisors.

Employees and Officials of Obligated Persons

Section 15B(e)(4) of the Exchange Act excludes from the definition of municipal advisor persons who are employees of a municipal entity, but does not extend such exclusion to employees of obligated persons. In the

[504] Comments regarding the treatment of such governing persons and employees of obligated persons, and how this exemption addresses such comments, are separately discussed further below.

[505] Rule 15Ba1–1(d)(3)(ii)(A).

[506] Rule 15Ba1–1(d)(3)(ii)(B).

[507] *See* Rule 15Ba1–1(d)(3)(ii).

[508] *See id.*

[509] Commenters provided some examples of advisory board composition and activities. *See, e.g.,* Combs Letter (describing that the ''Comptroller's Investment Advisory Board,'' which advises the state's trust company which in turn manages state funds, is unlike an investment adviser in that it doesn't assist with the selection of specific investments or investment professionals; that it provides general guidance but has no control over what purchases and sales are made with state funds; and that although the board members have no fiduciary duty, they also have no decisionmaking power); and letter from Gregg Abbott, State of Texas, dated February 22, 2011 (''State of Texas Letter'') (noting that distinguishing between governing boards and advisory boards is unworkable as some advisory boards are subcommittees of governing boards, some are made up of a combination of governing board members and other citizen volunteers, and some have no governing board members).

[510] Some municipal entity boards also have committees that may or may not be comprised of members of the board. *See, e.g.,* letter from Jerome Cochrane, University of Pittsburgh, dated February 22, 2011 (certain committees of the boards of certain Pennsylvania State universities include ''non-voting committee members, representing members of the public, alumni, faculty, staff and student bodies'').

[511] The Commission notes that the exemption for advisory board and committee members includes volunteer members of such boards and committees.

[512] *See supra* Section III.A.1.b.1. (discussing the advice standard in general).

[513] Section 15B(c)(1) of the Exchange Act (as amended by the Dodd-Frank Act) imposes a fiduciary duty on municipal advisors when advising municipal entities. *See* Proposal, 76 FR 827, note 60 and accompanying text.

[514] *Compare with supra* note 507 and accompanying text.

[515] *See* Rule 15Ba1–1(d)(3)(ii)(A).

Proposal, the Commission asked whether employees of obligated persons should be excluded, 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.[516] In addition, the Commission asked whether there are types of persons, other than employees of obligated persons, who should be excluded from the definition of municipal advisor.[517] In response, the Commission received several comments.

Some commenters stated that employees, officers, and directors of obligated persons should be excluded from the definition of municipal advisor when they provide advice to the obligated person with respect to municipal financial products or the issuance of municipal securities.[518] More specifically, some commenters stated that board members of obligated persons acting within the scope of their duties do not give ''advice'' and that it is the obligation of board members to communicate with fellow board members and staff.[519] For example, one commenter stated that municipal advisors typically have multiple clients, hold themselves out as advisors, and generally do not exercise decision making authority for the municipal entity or obligated person.[520] On the other hand, according to this commenter, directors and employees of obligated persons act on behalf of and in the interest of entities with which they are affiliated and do not hold themselves out as advisors.[521] They act for obligated persons in connection with municipal offerings only as part of their responsibilities to the obligated person.[522] Other commenters stated that members of governing boards of obligated persons are already subject to state and federal laws, such as laws governing non-profit entities, conflict of interest laws, ethics laws, and open meeting laws.[523] Commenters also made similar statements with respect to employees of obligated persons.[524] Further, some commenters stated that officers, directors, and employees of obligated persons are no different from those of municipal entities,[525] and an obligated person can only act through its board and employees.[526] One commenter suggested, however, that individual board members and employees should not be exempt from registration if they are engaged to provide services for a nonprofit organization as compensated advisors.[527]

Several commenters stated that the MSRB Study,[528] the legislative history of the Dodd-Frank Act, and the Proposal indicate that the term ''municipal advisor'' is meant to capture professionals that offer advisory services in a financial marketplace.[529] One commenter stated that for decades, in regulating the market for financial advice, Congress and the Commission have expressly declined to regulate internal advice provided by employee to employer.[530] The commenter stated that a departure from this established practice should not be inferred, absent a clear indication from Congress, and nothing in the language or history of the Dodd-Frank Act signals that Congress intended to affect a fundamental shift in policy.[531]

Some commenters stated that the proposed rules would make it difficult for obligated persons to recruit and retain board members and employees,[532] discourage officers and board members from engaging in matters that are traditionally within their purview,[533] and disrupt the process of borrowing and operations of borrowers and issuers.[534] Other commenters stated that the proposed rules could substantially increase the cost of financing[535] and could cause a potential borrower to forego projects using the economic development options offered by states and avoid the issuance of municipal bonds.[536]

As discussed above, one commenter suggested that ''employees and board members of a municipal entity should be excluded from regulation to the extent they provide advice to an obligated person (and acting in the

[516] *See* Proposal, 76 FR 837.

[517] *See id.*

[518] *See, e.g.,* NABL Letter; ABA Letter; letter from Duncan Gallagher, EVP and Chief Financial Officer, Allina Health System, dated February 22, 2011 (''Allina Health System Letter''; letter from Jeffrey S. Bromme, Senior Vice President and Chief Legal Officer and C. Robert Foltz, Associate Chief Legal Officer—Treasury, Adventist Health System Sunbelt Healthcare Corporation, dated February 11, 2011 (''Adventist Health System Letter'').

[519] *See, e.g.,* letter from Charles A. Samuels, Mintz Levin Cohn Ferris Glovsky & Popeo, P.C., on behalf of the National Association of Health & Educational Facilities Finance Authorities, dated February 17, 2011 (''National Association of Health & Educational Facilities Finance Authorities Letter''). *See also* Allina Health System Letter; Chapman and Cutler Letter; letter from Latham & Watkins, dated February 22, 2011 (''Latham & Watkins Letter''); and letter from David W. Lowden, Chair, the Committee on Non-Profit Organizations, Association of the Bar of the City of New York, dated February 14, 2011 (''New York City Bar Letter'').

[520] *See* Latham & Watkins Letter.

[521] *See id.*

[522] *See id.*

[523] *See, e.g.,* Kutak Rock Letter; National Association of Health & Educational Facilities Finance Authorities Letter; Latham & Watkins Letter; letter from Susan Ellen Wagner, Executive Director, Healthcare Trustees of New York State, dated February 16, 2011 (''Healthcare Trustees of New York State Letter''); William C. Daroff, Vice President for Public Policy & Director of the Washington Office, Jewish Federations of North America, dated February 25, 2011 (''Jewish Federations of North America Letter'').

[524] *See, e.g.,* National Association of Health & Educational Facilities Finance Authorities Letter; Latham & Watkins Letter; New York City Bar Letter; and letter from Corinne Johnson, Executive Director, Colorado Health Facilities Authority, Cris White, Executive Director, Colorado Housing and Finance Authority, Jo Ann Soker, Executive Director, Colorado Educational and Cultural Facilities Authority, dated February 18, 2011 (''Colorado Health Facilities Letter'').

[525] *See, e.g.,* South Lake County Hospital District Letter. *See also* Latham & Watkins Letter.

[526] *See, e.g.,* Squire Sanders & Dempsey Letter. *See also* Latham & Watkins Letter; MSRB Letter.

[527] *See* New York City Bar Letter.

[528] In April 2009, the MSRB issued a study titled ''Unregulated Municipal Market Participants: A Case for Reform,'' in which the MSRB advocated for the regulation of intermediaries in the municipal securities market (such as swap advisors and financial advisors). This study was referenced by the Commission in the Proposal. *See* Proposal, 76 FR 825, n.8.

[529] *See, e.g.,* letters from Michael B. Koffler and James K. Hasson, Jr., Sutherland Asbill & Brennan LLP on behalf of Universities, dated February 22, 2011 (''Universities Letter''); Richard D. Legon, President, Association of Governing Boards of Universities and Colleges, dated February 15, 2011 (''Association of Governing Boards of Universities and Colleges Letter'') (stating that board members and employees of obligated persons are not discussed in the preamble and cost estimates of the Proposal). *See also* letters from Molly Corbett Broad, President, American Council on Education, dated February 22, 2011 (''American Council on Education Letter''); Daniel G. Kirch, M.D., President and CEO, Association of American Medical Colleges, dated February 16, 2011 (''Association of American Medical Colleges Letter'').

[530] *See* American Council on Education Letter (providing as an example in support of their statement that existing registration requirements, such as those under the Investment Advisers Act, cover firms and persons in the business of providing advice, and that the requirements do not regulate employment relationships). *See also* Association of Governing Boards of Universities and Colleges Letter (noting that Commission staff has taken the position, in the context of a No-Action Letter under the Investment Advisers Act, that internal relationships are unlike the commercial relationships between an investment adviser and its clients that the Investment Advisers Act was intended to regulate).

[531] *See* American Council on Education Letter.

[532] *See, e.g.,* letter from Richard L. Clarke, DHA, FHFMA, President and CEO, Healthcare Financial Management Association, dated February 22, 2011 (''Healthcare Financial Management Association Letter''); Latham & Watkins Letter; and New York City Bar Letter.

[533] *See, e.g.,* Association of American Medical Colleges Letter; and New York City Bar Letter.

[534] *See, e.g.,* National Association of Health & Educational Facilities Finance Authorities Letter.

[535] *See, e.g.,* letter from Christopher B. Meister, Executive Director, Illinois Finance Authority, dated February 22, 2011 (''Illinois Finance Authority Letter''). *See also* SIFMA Letter I.

[536] *See, e.g.,* State of Indiana Letter; National Association of State Treasurers Letter; and New York City Bar Letter.

purview of their duties).'' [537] Likewise, employees and board members of an obligated person should be excluded from regulation to the extent they provide advice to a municipal entity.[538] On the other hand, another commenter stated that employees, officers, and directors of an obligated person should be exempt to the extent they provide advice solely to the obligated person and not to a municipal entity.[539] One other commenter stated that when an obligated person solicits conduit issuers to issue bonds on behalf of the obligated person, such solicitation should not require the obligated person or its board members or employees to register as municipal advisors.[540]

After considering the comments, the Commission agrees with commenters that board members, officers, and employees of obligated persons should be treated in the same manner as board members, officers, and employees of municipal entities and is using its statutory authority to provide an exemption for such persons that is parallel to the exemption with respect to municipal entities described above.[541] The Commission believes that this exemption is appropriate, because such individuals, when acting in the scope of their duty to the obligated person, are accountable to the obligated person. Further, board members, officers, and employees of obligated persons serve similar functions as board members, officers, and employees of municipal entities. Consequently, the Commission is exempting from the definition of municipal advisor any employee of an obligated person acting within the scope of such person's employment, as well as any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, an obligated person to the extent they are acting within the scope of their duties.[542] The Commission believes that, like municipal entities, obligated persons and persons who perform decision-making functions for, or otherwise act on behalf of, obligated persons, when fulfilling their duty to the obligated person, are also the intended beneficiaries of the protections afforded by the municipal advisor registration requirement. As with respect to municipal entities, board members, officials, and employees of obligated persons would be required to register, however, if they are engaged by other municipal entities or obligated persons to provide services as compensated advisors in addition to their normal duties as an employee, official, or board member of the obligated person.[543]

For the reasons described above, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt any: (1) Person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, an obligated person to the extent that such person is acting within the scope of such person's official capacity; and (2) employee of an obligated person to the extent that such person is acting within the scope of such person's employment.[544] Accordingly, such persons are not required to register as municipal advisors.

With regard to the application of the rules to employees or governing body members of an obligated person who solicit conduit issuers to issue bonds on behalf of the obligated person, the Commission notes that these persons are not acting as advisors.[545] Instead, they act as principals seeking an issuance of municipal securities by a municipal entity on behalf of the obligated person pursuant to an arm's-length loan (or similar) agreement under which the obligated person will be required to pay debt service and other costs upon bond issuance. The Commission notes that these individuals would not be required to register as municipal advisors, because they are not advising a municipal entity with respect to the issuance of municipal securities or soliciting a municipal entity on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser for the purpose of obtaining or retaining an engagement for such person. However, an employee, governing board member or other official of an obligated person could still be deemed to be engaged in municipal advisory activities (which include solicitation activities) if his or her recommendations cannot be properly characterized as negotiations of the terms by which the obligated person is agreeing to engage in the borrowing through the municipal entity.[546]

Regardless of an individual's title as a member of a governing body, an employee, or other official (appointed or elected) of a municipal entity or obligated person, the Commission notes that the exemptions described above do not apply to the extent such individual acts outside of the scope of authority of his or her position.[547]

ii. Responses to Requests for Proposals or Requests for Qualifications

In the Proposal, the Commission requested comment about banks that respond to municipal entities' RFPs regarding investment products offered, such as money market mutual funds or other exempt securities.[548] The Commission received a number of comments regarding responses to RFPs or RFQs by banks and other entities.[549]

Several commenters stated that responses to RFPs and RFQs should not require a person to register as a municipal advisor. For example, one commenter suggested that, with respect to municipal derivatives, responding to RFPs or RFQs from a municipal entity or obligated person does not constitute ''advice.'' [550] Similarly, another commenter stated generally that certain

[537] *See supra* note 499 and accompanying text.

[538] *See* Kutak Rock Letter.

[539] *See* ABA Letter.

[540] *See* NABL Letter. *See also* letter from James E. Potvin, Chair and Robert W. Giroux, Executive Director, Vermont Educational and Health Buildings Financing Agency, dated February 22, 2011 (''Vermont Educational and Health Buildings Financing Agency Letter''); and National Association of State Treasurers Letter; letter from Paul Goldstein, Vice President of Finance, Treasury/Accounting and Chief Financial Officer, Orlando Health, Inc., dated February 18, 2011 (''Orlando Health Letter''). Some commenters stated generally that obligated persons should not be required to register as municipal advisors. *See, e.g.,* Latham & Watkins Letter.

[541] *See* Rule 15Ba1–1(d)(3)(ii); and *supra* notes 504–505 and accompanying text.

[542] *See* Rule 15Ba1–1(d)(3)(ii). *See also* notes 504 and 506 and accompanying text.

[543] As described above, a local government official or appointed board member of a municipal entity would not be required to register as a municipal advisor if he or she provides advice, in the scope of his or her duties to that municipal entity employer, to another municipal entity. *See supra* notes and 496 and 507 accompanying text. In contrast, if such a person is engaged and compensated outside the scope of such duties, he or she would not be eligible for the exemption and would be required to register.

[544] *See* Rule 15Ba1–1(d)(3)(ii).

[545] *See supra* note 540 and accompanying text.

[546] *See supra* Section III.A.b.i. (discussing the advice standard in general) and Section III.A.b.x. (discussing solicitation of a municipal entity or obligated person).

[547] The exemption only applies ''to the extent such person is acting within the scope of such person's official capacity'' or ''employment,'' as applicable. *See* Rule 15Ba1–1(d)(3)(ii).

[548] *See* Proposal, 76 FR 837.

[549] *See also supra* notes 421–423 and accompanying text (discussing RFPs and RFQs in the context of the solicitation prong, including whether a market professional's activities assisting a municipal entity or obligated person in their selection of another market professional as part of an RFP process constitute municipal advisory activities); and *infra* Section III.A.1.c.vii. (discussing the treatment of responses by attorneys to RFPs from municipal entities and obligated persons).

[550] *See* BNY Letter.

activities should be expressly excluded from the definition of ''advice,'' including responding to RFPs or RFQs and providing terms on which a financial institution would be prepared to enter into a transaction or purchase securities issued by a municipal entity.[551] This commenter also stated that bid documents submitted in response to a municipal entity's request for private financing proposals should not constitute advice.[552] Another commenter concurred that responses to RFPs should not be treated as advice.[553]

The Commission has carefully considered the issues raised by commenters on the Proposal and agrees that responses to RFPs or RFQs alone do not constitute municipal advisory activities.[554] Therefore, the Commission is adopting Rule 15Ba1–1(d)(3)(iv), which exempts from the definition of municipal advisor ''[a]ny person providing a response in writing or orally to a request for proposals or qualifications from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities; *provided however,* that such person does not receive separate direct or indirect compensation for advice provided as part of such response.'' [555]

Responses to RFPs or RFQs are provided at the request of, and established by, a municipal entity or obligated person as part of a competitive process. Therefore, it is reasonable to believe that the municipal entity or obligated person would understand that service providers respond to RFPs and RFQs in order to obtain business and would not rely on such responses as it would on advice from its advisor. Further, persons who respond to RFPs or RFQs are likely to be already regulated entities, such as registered municipal advisors, brokers, dealers, or investment advisers. Accordingly, their responses may be subject to fair dealing, suitability, or other standards. Moreover, if a person is selected by a municipal entity or obligated person as a result of an RFP or RFQ, such person could be required to register as a municipal advisor for its subsequent activities.

For the same reasons discussed above for other RFPs, the exemption pursuant to Rule 15Ba1–1(d)(3)(iv) also includes responses to so-called ''mini-RFPs'' that might only be distributed to service providers that have been pre-screened or pre-qualified by the municipal entity or obligated person. For the exemption to apply, a person providing advice in response to an RFP or RFQ may not be separately compensated for advice given as part of the RFP or RFQ process. Further, the compensation such person receives, if hired as a result of the RFP or RFQ, is not direct or indirect compensation for the advice provided as part of the RFP or RFQ. However, assisting with the preparation of an RFP or RFQ on behalf of a municipal entity or obligated person, or assisting in the selection of a broker-dealer, investment adviser, or financial advisor as part of an RFP process, could constitute municipal advisory activity. Specifically, in assisting in the preparation of an RFP or RFQ, a person could provide advice with respect to the parameters of such RFP or RFQ, such as the potential use of municipal financial products or the issuance of municipal securities. Further, in assisting in the selection of a broker-dealer, investment adviser, or municipal advisor as part of an RFP process, a person could provide advice with respect to the responses to the RFP, including responses related to the use of municipal financial products or the issuance of municipal securities.[556]

For the foregoing reasons, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) [557] to exempt persons responding to RFPs and RFQs from the definition of municipal advisor, subject to the limitations described above.

iii. Municipal Entity or Obligated Person Represented by an Independent Municipal Advisor

In the Proposal, the Commission sought comment on whether it should provide other exclusions from the definition of municipal advisor.[558] Several commenters suggested that a person providing advice with respect to municipal financial products or the issuance of municipal securities should not be regulated as a municipal advisor if the municipal entity or obligated person is otherwise represented by a municipal advisor with respect to the transaction.[559] One commenter argued that the Commission should provide that a person will not be regulated as a municipal advisor to a municipal entity or obligated person if such municipal entity or obligated person is or will be represented by an ''independent advisor'' that is a registered municipal advisor (or that is eligible for an exception) and any relevant documentation states that: (1) The person is not acting as an ''advisor;'' and (2) the municipal entity or obligated person is not relying on any advisory communications from such person.[560] According to another commenter, ''when a municipality has engaged an independent financial advisor in connection with a proposed transaction, unaffiliated counterparties or potential counterparties to the transaction should not be deemed to be providing advice to the municipality as it has already elected an entity to fulfill that role.'' [561] Another commenter stated that, in most cases where a bank is ''providing a municipal derivative or other bank products and services to a municipal entity or obligated person, a third party

[551] *See* Letter from Nick Butcher, Senior Managing Director, Macquarie Capital Advisors, dated February 22, 2011 (''Macquarie Letter'').

[552] *See* Macquarie Letter.

[553] *See* OCC Letter. This commenter stated, among other things, that banks respond to RFPs on a competitive basis, and many municipalities are required by statute to issue RFPs to banks for their operating accounts. *See id.*

[554] For a discussion of RFPs and RFQs in the context of the solicitation prong, *see supra* notes 421–423 and accompanying text.

[555] The Commission notes that FINRA applies a similar approach in connection with the application of its suitability rule to broker-dealers. *See* FINRA Rule 2111. In a recent Regulatory Notice, FINRA explained that, where a registered representative makes a recommendation to purchase a security to a *potential investor,* the suitability rule would apply to the recommendation if that individual executes the transaction through the broker-dealer with which the registered representative is associated or the broker-dealer receives or will receive, directly or indirectly, compensation as a result of the recommended transaction. *See* FINRA Regulatory Notice 12–55. For purposes of the municipal advisor registration rules, if a person is selected as a result of an RFP or RFQ, any applicable law or rule (*e.g.,* fair dealing, suitability, fiduciary duty) will apply to that person's activities in the role for which the person was selected.

[556] A person assisting a municipal entity or obligated person in selecting a broker-dealer, investment adviser, or financial advisor as part of an RFP process established by the municipal entity or obligated person would not, however, be considered to be undertaking a solicitation for purposes of the definition of municipal advisor in Rule 15Ba1–1(d)(1), because such person would not be soliciting ''on behalf of'' such broker-dealer, investment adviser, or financial advisor. *See supra* Section III.A.1.b.x. (discussing generally solicitation of a municipal entity or obligated person). *See also* Rule 15Ba1–1(n) (defining solicitation of a municipal entity or obligated person).

[557] Pursuant to Section 15B of the Exchange Act, the Commission may exempt any class of municipal advisors from any provision of Section 15B or the rules and regulations thereunder, if it ''finds that such exemption is consistent with the public interest, the protection of investors, and the purpose of [Section 15B].'' *See* 15 U.S.C. 78*o*–4(a)(4).

[558] *See* Proposal, 76 FR 838.

[559] *See, e.g.,* SIFMA Letter I; letter from Adella M. Heard, Senior Vice President and Assistant General Counsel, First Tennessee Bank National Association, dated February 18, 2011 (''First Tennessee Bank National Association Letter''); BNY Letter.

[560] *See* SIFMA Letter I.

[561] *See* First Tennessee Bank National Association Letter.

advisor is providing advice on the transaction to the municipal entity or obligated person.'' [562] This commenter suggested that the existence of such a third party relationship should be viewed as evidence that the municipal entity or obligated person is not relying on the bank for advice.[563]

The Commission has carefully considered these comments and is adopting Rule 15Ba1–1(d)(3)(vi), which exempts from the municipal advisor definition any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities, provided that the following requirements are met.[564] First, an independent registered municipal advisor must be providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities as the person seeking to rely on Rule 15Ba1–1(d)(3)(vi).[565] For purposes of Rule 15Ba1–1(d)(3)(vi), the term ''independent registered municipal advisor'' means a municipal advisor registered pursuant to Section 15B of the Exchange Act and the rules and regulations thereunder and that is not, and within at least the past two years was not, associated [566] with the person seeking to rely on Rule 15Ba1–1(d)(3)(vi). The Commission believes that a two year cooling-off period represents an appropriate period of time to help remove any actual or perceived influence over a municipal advisor's ability to exercise independent judgment when engaging in municipal advisory activities.[567] Second, a person seeking to rely on this exemption must receive from the municipal entity or obligated person a representation in writing that it is represented by, and will rely on the advice of, an independent registered municipal advisor, and such person has a reasonable basis for relying on the representation.[568] Third, such person must provide the required disclosures to the municipal entity or obligated person, and provide a copy of such disclosures to the municipal entity's or obligated person's independent registered municipal advisor. With respect to a municipal entity, such person must disclose in writing to the municipal entity that, by obtaining such representation from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty established in Section 15B(c)(1) of the Exchange Act with respect to the municipal financial product or issuance of municipal securities.[569] With respect to an obligated person, such person must disclose in writing to the obligated person that, by obtaining such representation from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities.[570] The rule also requires that each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities.[571] The level and timing of disclosure required may vary according to the issuer's knowledge or experience.[572]

The requirement that a copy of the disclosure be provided to the independent registered municipal advisor is not intended to alter the nature of the duty owed by the municipal advisor to its municipal entity or obligated person client or the nature of such municipal advisor's engagement.

The Commission believes that exempting persons advising a municipal entity or obligated person from the definition of municipal advisor when the municipal entity or obligated person is represented by an independent registered municipal advisor is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act. The Commission believes that Rule 15Ba1–1(d)(3)(vi) will allow parties to a municipal securities transaction and others who are not registered municipal advisors to share advice with municipal entities and obligated persons so long as the municipal entity or obligated person is represented by an independent registered municipal advisor. A municipal entity represented by an independent registered municipal advisor will have the benefits associated with the regulation of municipal advisors. Such benefits include, but are not limited to, standards of conduct, training, and testing for municipal

[562] *See* BNY Letter.

[563] *See* BNY Letter.

[564] *See* Rule 15Ba1–1(d)(3)(vi).

[565] *See* Rule 15Ba1–1(d)(3)(vi)(A).

[566] For purposes of the definition of ''independent registered municipal advisor'' in Rule 15Ba1–1(d)(3)(vi), the criteria for association set forth in Section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)) will apply. *See* Rule 15Ba1–1(d)(3)(vi)(A).

[567] A two-year period is also used to determine whether an individual is a ''public representative'' for purposes of MSRB Board membership. Specifically, for purposes of determining whether an individual is a public representative, the MSRB defined the term ''no material business relationship'' to mean that, at a minimum, the individual is not and, within the last two years, was not associated with a municipal securities broker, municipal securities dealer, or municipal advisor, and that the individual does not have a relationship with any municipal securities broker, municipal securities dealer, or municipal advisor, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision making of the individual. *See* Securities Exchange Act Release No. 63025 (September 30, 2010), 75 FR 61806, 61808 (October 6, 2010) (SR–MSRB–2010–08). Further, Rule 206(4)–5(a)(1) under the Investment Advisers Act prohibits investment advisers from receiving compensation for providing advice to a ''government entity'' within two years after a ''contribution'' to an ''official'' of the government entity has been made by the investment adviser or by any of its ''covered associates.'' *See* 17 CFR 275.206(4)–5(a)(1). In adopting this rule, the Commission stated that the two-year time out is intended to discourage advisers from participating in pay-to-play practices by requiring a cooling off period during which the effects of a political contribution on the selection process can be expected to dissipate. *See* Political Contributions Final Rule, 75 FR 41026.

[568] *See* Rule 15Ba1–1(d)(3)(vi)(B). The same standards and principles apply in determining whether a person has a reasonable basis for reliance as discussed previously with respect to reliance on representations regarding proceeds determinations. *See supra* notes 364–365 and accompanying text.

[569] *See* Rule 15Ba1–1(d)(3)(vi)(C)(1).

[570] *See* Rule 15Ba1–1(d)(3)(vi)(C)(2).

[571] *See* Rule 15Ba1–1(d)(3)(vi)(C)(3). The CFTC's business conduct standards for swap dealers and major swap participants contain similar standards for disclosure to counterparties. Specifically, CFTC Rule 23.431(a) states that: ''At a reasonably sufficient time prior to entering into a swap, a swap dealer or major swap participant shall disclose to any counterparty to the swap (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) material information concerning the swap in a manner reasonably designed to allow the counterparty to assess [risks, characteristics, and conflicts of interest related to the swap.]'' 17 CFR 23.431(a).

[572] The Commission believes that some municipal advisors are already familiar with this disclosure level and timing standard. *See* Interpretive Notice Concerning the Application of MSRB Rule G–17 to Underwriters of Municipal Securities (August 2, 2012), available at *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx?tab=2* (stating that ''[t]he level of disclosure required may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability to bear the risks of the recommended financing, in each case based on the reasonable belief of the underwriter''); MSRB Notice 2013–08 (March 25, 2013) MSRB Answers Frequently Asked Questions (FAQS) Regarding an Underwriter's Disclosure Obligations to State and Local Government Issuer Under Rule G–17, available at *http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-08.aspx* (referencing the requirement under the Interpretive Notice Concerning the Application of MSRB Rule G–17 that the arm's length nature of the relationship be provided ''At the earliest stages of the relationship, generally at or before a response to a request for proposals or promotional materials are delivered to an issuer.'').

advisors that may be required by the Commission or the MSRB, other requirements unique to municipal advisors that may be imposed by the MSRB,[573] and fiduciary duty. While independent registered municipal advisors do not owe a fiduciary duty to obligated persons, the Commission notes that they have a duty to deal fairly with obligated persons under MSRB Rule G–17.[574] Also, as noted by commenters, the engagement by a municipal entity or obligated person of an independent registered municipal advisor indicates that the municipal entity or obligated person intends to rely on the advice of that advisor. Rule 15Ba1–1(d)(3)(vi) requires that this intention be further evidenced by a written representation that the municipal entity or obligated person will rely on the advice of an independent registered municipal advisor. Further, Rule 15Ba1–1(d)(3)(vi) requires the person receiving such representation to have a reasonable basis for relying on the representation.

So long as a municipal entity or obligated person is represented by and relies on an independent registered municipal advisor, the Commission believes it is appropriate to allow municipal entities and obligated persons to receive as much advice and information as possible from a variety of sources, even if the providers of such advice are not subject to a fiduciary duty. The Commission does not seek to curtail the receipt of important advice and information so long as the municipal entities and obligated persons are represented by and rely on independent registered municipal advisors who are subject to a fiduciary or other duties and who can help the municipal entities and obligated persons evaluate the advice and identify potential conflicts of interest. Further, the requirement that a person seeking to rely on this rule provide a copy of the disclosures under Rule 15Ba1–1(d)(3)(vi)(C) to the independent registered municipal advisor will help timely inform the independent registered municipal advisor that the municipal entity or obligated person is receiving advice from a person seeking to rely on Rule 15Ba1–1(d)(3)(vi).

In addition, certain persons that may engage in municipal advisory activities could also be counterparties to a municipal entity or obligated person, such as swap dealers and security-based swap dealers. The requirement for such persons to register as municipal advisors could be inconsistent with their roles as counterparties to the municipal entity or obligated person. While the Commission is separately providing certain exemptions for counterparties of municipal entities and obligated persons,[575] such persons may also consider whether they can rely on this exemption.

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

Exchange Act Section 15B(e)(4)(C) provides that the term ''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) (the ''underwriter exclusion'').[576] In the Proposal, the Commission proposed to interpret this statutory underwriter exclusion to apply solely to a broker, dealer, or municipal securities dealer serving as an underwriter in connection with the issuance of municipal securities.[577] Further, the Commission proposed that this exclusion would not apply when such persons are acting in a capacity other than as an underwriter, and that, for example, this exclusion would not apply to advice with respect to the investment of bond proceeds or municipal derivatives.[578]

In the Proposal, the Commission requested comment on whether its interpretation of the statutory exclusion from the definition of municipal advisor for a broker, dealer, or municipal securities dealer serving as an underwriter was appropriate.[579] The Commission received approximately 20 comment letters addressing the scope of this underwriter exclusion. Most commenters suggested that this exclusion should cover broker-dealer activities already subject to regulation,[580] and some commenters suggested that it should cover broker-dealer activities that are solely incidental to underwriting an issuance of municipal securities.[581] By contrast, other commenters supported a more limited scope for the underwriter exclusion, stating, for example, that ''[u]nless the Commission recognizes and implements in an appropriate manner the narrow character of the underwriter definition referenced in the Dodd-Frank Act, the Commission will be diminishing otherwise important protections for municipal entities and obligated persons provided in that Act.'' [582] Another commenter suggested that the Commission clarify that an underwriter is not permitted to provide ''advice'' with respect to the structure, timing, or terms of the bond issue it seeks to purchase and distribute.[583]

The Commission has carefully considered comments submitted about the underwriter exclusion in the Proposal, as discussed further below, and is adopting its proposed interpretation of the statutory underwriter exclusion, with modifications and clarifications designed to address commenters' concerns. Specifically, Rule 15Ba1–1(d)(2)(i) provides that the term ''municipal advisor'' shall not include a ''broker, dealer, or municipal securities dealer serving as an underwriter of a particular issuance of municipal securities to the extent that the broker, dealer, or municipal securities dealer engages in activities that are within the scope of an underwriting of such issuance of municipal securities.''

Under the Commission's modified interpretation of the underwriter exclusion, if a broker, dealer, or municipal securities dealer is serving as an underwriter of a particular issuance of municipal securities, the underwriter exclusion would include advice provided by that underwriter within the scope of underwriting and would generally include advice with respect to the structure, timing, terms, and other similar matters concerning that issuance of municipal securities.

[573] *See supra* note 190.

[574] *See* MSRB Rule G–17.

[575] *See, e.g., infra* Section III.A.1.c.vi. (discussing an exemption for swap dealers).

[576] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[577] *See* Proposal, 76 FR 832 and proposed Rule 15Ba1–1(d)(2)(ii). *See also* Temporary Registration Rule Release, 75 FR 54467, note 19. In the Proposal, the Commission stated its belief that Congress excluded from the definition of municipal advisor 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. *See* Proposal, 76 FR 832, note 107.

[578] *See* Proposal, 76 FR 832.

[579] *See id.,* at 836.

[580] *See, e.g.,* letter from JoAnn Bourne, Senior Executive Vice President, Global Treasury Management, Union Bank, N.A., dated February 18, 2011 (''Union Bank Letter'') (stating the belief that, while the Dodd-Frank Act only provided an exclusion for brokers and dealers when they are serving as underwriters, Congress did not intend to impose an additional level of regulation on broker-dealers when they are providing advice that is already subject to regulation); SIFMA Letter I; and letter from Noreen Roche-Carter, Chair, Tax & Finance Task Force, Large Public Power Council, dated February 22, 2011 (''Large Public Power Council Letter'') (stating that ''[b]y limiting that exemption to instances where the broker-dealer is acting as an underwriter, we are concerned this will limit the types of services provided to our members by broker-dealers compared to what has traditionally been provided to our members'').

[581] *See infra* note 637 and accompanying text.

[582] *See, e.g.,* letter from Robert Doty, AGFS, dated February 22, 2011 (''Doty Letter I'').

[583] *See* letter from Colette-Irwin Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated February 22, 2011 (''NAIPFA Letter'').

It is important to note that the following advice would be outside the scope of an underwriting for purposes of this exclusion: (1) Advice on investment strategies; (2) advice on municipal derivatives; and (3) advice otherwise identified by the Commission to be outside the scope of an underwriting.[584] Such advice generally is not within the scope of serving as an underwriter on an issuance of municipal securities and can raise issues that implicate the policy objectives of municipal advisor registration. For example, municipal entities suffered significant losses in the financial crisis related to advice on complex municipal derivatives,[585] and advice on investments,[586] such as refunding escrow investments provided by underwriters [587] and investments involving fraud in investment bidding procedures,[588] has been the subject of significant enforcement activity. In other circumstances, such advice may create conflicts of interest for an underwriter, such as when the advice addresses whether to issue debt or whether to conduct a competitive sale instead of a negotiated underwriting. In addition, as discussed further below, the underwriter exclusion does not include all activities that may be solely incidental to an underwriting, such as advice on investment strategies or advice on municipal derivatives, because these activities are not within the scope of an underwriting and are activities for which municipal entities and obligated persons require the protections afforded by municipal advisors.

Although, as noted above, ''issuance of municipal securities'' should be construed broadly,[589] the Commission believes that, in order for a person to be ''serving as an underwriter'' [590] with respect to an issuance of municipal securities, there must be a relationship to a particular transaction.[591] For example, a contractual engagement by a municipal entity of a broker-dealer to serve as underwriter on a specific planned transaction for the issuance of municipal securities would constitute the requisite engagement on a particular issuance of municipal securities. By contrast, an engagement by a municipal entity of a broker-dealer to serve as underwriter for some period of time or to serve as a member of an underwriting ''pool'' without specifying the broker-dealer's assignment expressly to serve as underwriter on one or more particular planned transactions would not constitute serving as an underwriter on a particular issuance of municipal securities. Further, an underwriter providing advice with respect to related transactions or tranches on which it is not engaged would be acting within the scope of the underwriter exclusion only if such advice is also related to the tranche or transaction on which the underwriter is engaged. For example, an underwriter may give advice about the timing of a sale of a related transaction on which it is not engaged by noting that shifting the timing of such sale will have a positive impact on market demand for the transaction on which it is engaged. Such advice would fall within the underwriter exclusion because such advice concerns the timing of the particular issuance of municipal securities for which it is acting as underwriter and is not regarded by the Commission as being outside the scope of an underwriting.

The Commission recognizes, however, that a municipal entity issuer may wish to request advice on an issuance of municipal securities from a broker-dealer serving as a member of its underwriting ''pool'' that does not yet have a specific assignment or from a broker-dealer engaged on related transactions or tranches. In such circumstances, the broker-dealer could respond within the requirements of one of the other exemptions of general applicability discussed above. For example, if the municipal entity issuer was seeking the advice in response to a ''mini-RFP'' sent to members of the underwriting pool, the broker-dealer could respond and provide advice within the limitations of the exemption for responses to RFPs and RFQs.[592] In addition, if the municipal entity is represented by an independent registered municipal advisor with respect to such issuance of municipal securities, the broker-dealer could respond and provide advice if the requirements of the exemption available when a municipal entity is otherwise represented by an independent registered municipal advisor with respect to the same aspects of the issuance of municipal securities were satisfied.[593] Finally, depending on the nature of the requested information and the response, it might be considered a communication or effort to win business that is not municipal advisory activity.[594]

In response to commenters that suggested that underwriters should not be permitted to provide ''advice'' with respect to the structure, timing and terms of the bond issue it seeks to purchase and distribute,[595] the Commission points out that, subsequent to the Proposal, the MSRB provided additional interpretive guidance under MSRB Rule G–17, which requires that brokers, dealers, and municipal securities dealers acting as underwriters make certain disclosures to municipal issuers about the roles of underwriters in negotiated sales of municipal securities, including disclosures about their duty of fair dealing with a municipal issuer (but not a fiduciary duty to a municipal issuer) and their actual or potential, material conflicts of interest. The Commission continues to believe that allowing underwriters to give advice within the scope of an underwriting with respect to the structure, timing, terms, and other similar matters concerning an issuance is consistent with the aim of improving the quality of advice that municipal entities and obligated persons receive, because these Rule G–17 disclosure requirements should assist them in clarifying the duties of underwriters to municipal issuers, identifying conflicts of interest, and appropriately evaluating the advice they receive from underwriters with that informed perspective.[596]

The Commission continues to believe that a broker, dealer, or municipal securities dealer engaging in municipal advisory activities outside the scope of underwriting a particular issuance of municipal securities should be subject to municipal advisor registration, absent the availability of another exemption or exclusion. With respect to the treatment of advice on municipal derivatives as

[584] *See infra* note 612 and accompanying text.

[585] *See supra* note 3 and accompanying text.

[586] *See supra* note 106 and accompanying text.

[587] *See supra* note 380 and accompanying text.

[588] *See supra* note 287 and accompanying text.

[589] *See supra* Section III.A.1.b.vii (discussing the term ''issuance of municipal securities'').

[590] *See* Rule 15Ba1–1(d)(2)(i).

[591] *See, e.g., In re Laser Arms Corp. Sec. Litig.,* 794 F.Supp. 475, 484 (S.D.N.Y. 1989) (citing L. LOSS, THE FUNDAMENTALS OF SECURITIES REGULATION 278 (1983)). As set forth in Section 2(11) of the Securities Act, the definition of a statutory underwriter turns on the relationship of the party and the offering. Professor Loss has observed that ''[t]he term 'underwriter' is defined not with reference to the particular person's general business but on the basis of his *relationship to the particular offering.''*

[592] *See supra* Section III.A.1.c.ii.

[593] See supra Section III.A.1.c.iii.

[594] *See infra* notes 615–618 and accompanying text.

[595] *See, e.g.,* NAIPFA Letter.

[596] *See* MSRB Notice 2012–25 (May 7, 2012) (Securities and Exchange Commission Approves Interpretive Notice on the Duties of Underwriters to State and Local Government Issuers). In response to comments on this Rule G–17 interpretive guidance, the MSRB also indicated that it would continue to study whether to impose a suitability standard on the types of financial products (including types of bond structures) that may be sold to municipal entities. *See* letter from Margaret Henry, General Counsel, Market Regulation, MSRB, dated February 13, 2012, available at *http://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-24.pdf.*

outside the underwriter exclusion, the Commission notes that one purpose of the municipal advisor provision in the Dodd-Frank Act was to address concerns about advice to municipalities on complex municipal derivatives in which municipalities suffered significant losses in the financial crisis.[597]

Several commenters requested additional guidance from the Commission regarding the types of activities that would fall within the Commission's interpretation of the statutory underwriter exclusion for activity within the scope of an underwriting of an issuance of municipal securities. For example, one commenter stated that the exclusion should clearly extend to a full range of activities ''closely related'' to the underwriting.[598] Another commenter asserted that certain municipal advisory activities and, in particular, certain ''transaction-related services'' provided by underwriters are integral to fulfilling the function of an underwriter in a professional manner but did not specify which activities were integral.[599] A few commenters stated that the Proposal did not provide sufficient guidance regarding the scope of the underwriter exclusion and requested further clarification.[600]

Set forth below are non-exclusive examples of activities that the Commission considers to be within or outside the scope of the underwriter exclusion to the municipal advisor definition, respectively.

Examples of Activities Within the Scope of Serving as an Underwriter of a Particular Issuance Municipal Securities for Purposes of the Underwriter Exclusion

The Commission agrees with those commenters[601] that stated that it is not possible to provide an exhaustive list of all activities that would be considered to be within the scope of an underwriting. As a general matter, the Commission considers activities that are integral to the purchase and distribution of a particular issuance of municipal securities on which a broker, dealer, or municipal securities dealer is engaged to serve in the capacity as underwriter to be within the scope of the underwriter exclusion. The Commission also considers activities that are integral to fulfilling the role of an underwriter, such as the obligations of underwriters under the antifraud provisions of the federal securities laws and obligations of underwriters under MSRB rules, to be within the scope of an underwriting.[602]

The Commission considers the following activities, identified by commenters,[603] to be within the scope of the underwriting exclusion:[604] (1) advice regarding the structure, timing, terms, and other similar matters concerning a particular issuance of municipal securities (except as otherwise provided herein with respect to advice on investment strategies, municipal derivatives, or other activities identified by the Commission as outside the scope of an underwriting); (2) preparation of rating strategies and presentations related to the issuance being underwritten; (3) preparations for and assistance with investor ''road shows'' and investor discussions related to the issuance being underwritten; (4) advice regarding retail order periods and institutional marketing if the municipal entity has determined to engage in a negotiated sale; (5) assistance in the preparation of the preliminary and final official statements for the municipal securities; (6) assistance with the closing of the issuance of municipal securities, including negotiation and discussion with respect to all documents, certificates, and opinions needed for such closing; (7) coordination with respect to obtaining CUSIP numbers and the registration of the issue of municipal securities with the book-entry only system of the Depository Trust Company; (8) preparation of post-sale reports for such municipal securities; and (9) structuring of refunding escrow cash flow requirements necessary to provide for the refunding and defeasance of an issue of municipal securities (provided, however, that the recommendation of and brokerage of particular municipal escrow investments is outside the scope of the underwriting exclusion).

Examples of Activities Outside the Scope of Serving as an Underwriter of a Particular Issuance of Municipal Securities for Purposes of the Underwriter Exclusion

Several commenters[605] also requested clarification as to whether certain strategic, transaction-related, and post-issuance activities would be considered acting within the scope of the underwriter exclusion. The Commission notes that an underwriter providing certain advice outside the scope of the underwriter exclusion would not be required to be registered as a municipal advisor in order to provide that advice if: (a) the advice does not relate to a municipal financial product[606] or the issuance of municipal securities,[607] (b) the advice is given in response to a request for proposal[608] or is otherwise permitted when seeking to obtain

[597] *See* S. Rep. No. 111–176, at 38 (2010).

[598] *See* SIFMA Letter I. This commenter recommended that covered activities for the underwriter exclusion should include: (1) Advice regarding the issuance of municipal securities, municipal financial products, or any other securities in the context of an underwriting; (2) advice on the advisability of a municipal derivative (including entering into a new derivative or amending or terminating an existing derivative) in connection with an underwriting; (3) advice in the capacity of a member of the municipal entity or obligated person's underwriting pool, even if not in the context of a particular deal, or other services after the closing of an issuance of municipal securities but which relate to the issuance for which the underwriter acted as an underwriter; (4) communications and analyses that are part of an effort or presentation to obtain business from the municipal entity or obligated person, or otherwise part of seeking to serve as an underwriter on future transactions; (5) assistance on related transactions and related tranches of the offering; and (6) service as a dealer-manager on a related tender or exchange offer for outstanding securities.

[599] *See* letter from Alan Polsky, Chair, MSRB, dated November 9, 2011 (''MSRB Letter II'') (including a listing of transaction-related services of which, according to the commenter, some may be appropriately performed by a broker-dealer as part of an underwriting). *See also* letter from Robert K. Dalton, Vice Chairman, George K. Baum & Company, dated December 20, 2011 (the ''Baum Letter'') (noting that in the text of their November 9, 2011 letter the MSRB noted that not only transaction-related services are integral to an underwriting). *But see* NAIPFA Letter and letter from Colette Irwin-Knott, President, NAIPFA, dated November 30, 2011 (''NAIPFA Letter II'') (stating its belief that certain of such transaction-related services listed in the MSRB's letter are not so ''integrally related'' to an underwriter's duties to warrant exclusion from regulation as a municipal advisor).

[600] *See, e.g.,* letter from Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc., dated February 22, 2011 (''BMO Capital Markets Letter'') (stating that the Commission has made no attempt to clarify the myriad of confusing issues it has raised with respect to the exclusion for underwriters); Joy Howard WM Financial Strategies Letter (stating that ''it is unclear what trigger event would create an underwriting relationship as opposed to a municipal advisory relationship''); Bond Dealers of America Letter (noting that the underwriter exclusion is not clearly defined).

[601] *See, e.g.,* MSRB Letter II.

[602] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, 2811–28812 (July 10, 1989); Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33123–33125 (June 10, 2010); *See also* MSRB Rules G–17 and G–19.

[603] *See, e.g.,* MSRB Letter II; NAIPFA Letter; NAIPFA Letter II; SIFMA Letter I; and Baum Letter.

[604] This list of activities includes examples of activities that the Commission considers to be within the scope of an underwriting; the list does not purport to cover all possible activities qualifying for the underwriter exclusion.

[605] *See, e.g.,* NAIPFA Letter.

[606] *See supra* Section III.A.1.b.iv. (discussing the definition of ''municipal financial products'').

[607] *See supra* Section III.A.1.b.vii. (discussing the term ''issuance of municipal securities'').

[608] *See supra* Section III.A.1.c.ii. (discussing the exemption for responses to RFPs and RFQs).

business,[609] or (c) the advice is given when the municipal entity has engaged an independent registered municipal advisor.[610]

The Commission considers the following activities, identified by commenters,[611] to be outside the scope of the underwriter exclusion:[612] (1) advice on investment strategies; (2) advice on municipal derivatives (including derivative valuation services); (3) advice on what method of sale (competitive sale[613] or negotiated sale[614]) a municipal entity should use for an issuance of municipal securities; (4) advice on whether a governing body of a municipal entity or obligated person should approve or authorize an issuance of municipal securities; (5) advice on a bond election campaign; (6) advice that is not specific to a particular issuance of municipal securities on which a person is serving as underwriter and that involves analysis or strategic services with respect to overall financing options, debt capacity constraints, debt portfolio impacts, analysis of effects of debt or expenditures under various economic assumptions, or other impacts of funding or financing capital projects or working capital; (7) assisting issuers with competitive sales, including bid verification, true interest cost (TIC) calculations and reconciliations, verifications of bidding platform calculations, and preparation of notices of sale; (8) preparation of financial feasibility analyses with respect to new projects; (9) budget planning and analyses and budget implementation issues with respect to debt issuance and collateral budgetary impacts; (10) advice on an overall rating strategy that is not related to a particular issuance of municipal securities on which a person is serving as an underwriter, including advice and actions taken on behalf of a municipal entity or obligated person between financing transactions; (11) advice on overall financial controls that are not related to a particular issuance of municipal securities on which a person is serving as an underwriter; or (12) advice regarding the terms of requests for proposals or requests for qualification for the selection of underwriters or other professionals for a project financing and advice regarding review of responses to such requests, including matters regarding compensation of such underwriters or other professionals.

The Commission believes the above-listed activities are not within the scope of the underwriter exclusion because the activities are either not specific to a particular issuance of municipal securities for which a broker, dealer or municipal securities dealer could be serving as an underwriter or the activities are not integral to fulfilling the role of an underwriter.

Communications or Efforts to Win Business

A few commenters asked whether communications and analyses that are part of an effort to win business would be considered municipal advisory activity.[615] The Commission notes that not all communications with a municipal entity or obligated person constitute municipal advisory activities. If the person has identified himself or herself as seeking to obtain business, such as serving as an underwriter on future transactions, whether such communications and analyses constitute municipal advisory activities or the provision of general information (as discussed further above[616]) will depend on the specific facts and circumstances. For example, pursuant to the Commission's interpretation of the treatment of the provision of general information, the Commission believes that a broker-dealer who provides information to a municipal entity regarding its underwriting capabilities and experience or general market or financial information that might indicate favorable conditions to issue or refinance debt likely would not be treated as engaging in municipal advisory activity.

On the other hand, for purposes of this rule and in response to comments,[617] the Commission does not consider advice rendered by a broker-dealer in its capacity as a member of an ''underwriting pool'' for a municipal entity or obligated person (and in the absence of a designation of that broker-dealer to serve as underwriter on the particular issuance of municipal securities on which the advice is given) to be advice within the scope of the underwriting exclusion. An underwriting pool generally includes a group of underwriters selected by a municipal entity pursuant to an RFP or other process[618] from which the municipal entity may select one or more firms to underwrite a specific transaction. As noted above, a broker-dealer that is merely a part of an underwriting pool is not engaged to underwrite any particular issuance, and therefore, is not acting as an underwriter. As described above, however, depending on the particular facts and circumstances, the broker-dealer's activities as part of an underwriting pool may be within the requirements of one of the exemptions of general applicability,[619] may be considered to be an effort to obtain underwriting business on its own behalf, or may be otherwise exempt, which would not require municipal advisor registration.

Post-Offering Services

Commenters asked whether post-offering work performed by an underwriter would qualify for the underwriter exclusion or whether it would constitute municipal advisory activity requiring registration.[620] For purposes of this rule, the Commission considers post-offering work performed by an underwriter to be municipal advisory activity unless it is a request for information or services that would have been provided as part of the underwriting (such as resending cash flow and other similar information related to the offering) or is required for an underwriter to fulfill its regulatory

[609] *See infra* notes 615 and 616 and accompanying text (discussing communications or efforts to win business).

[610] *See supra* Section III.A.1.c.iii. (discussing the exemption when the municipal entity or obligated person is represented by an independent municipal advisor).

[611] *See, e.g.,* MSRB Letter II; NAIPFA Letter; NAIPFA Letter II; SIFMA Letter I; and Baum Letter.

[612] For broker-dealers serving as underwriters for a particular issuance of municipal securities, these activities would *not* be excluded from the definition of municipal advisor because they are *not* within the scope of an underwriting of such issuance of municipal securities. This list of activities includes examples of activities that the Commission considers to be outside the scope of the underwriter exclusion; the list does not purport to cover all possible activities not qualifying for the underwriter exclusion.

[613] Competitive sale is a method of sale chosen by an issuer, requesting underwriters to submit a firm offer to purchase a new issue of municipal securities. The issuer awards the municipal securities to the ''winning'' underwriter or syndicate presenting a bid complying with the terms of a Notice of Sale that provides the lowest interest rate cost according to stipulated criteria set forth in the Notice of Sale. *See* definition of ''Competitive Sale'' in MSRB Glossary.

[614] Negotiated sale is the sale of a new issue of municipal securities by an issuer directly to an underwriter or underwriting syndicate selected by the issuer. *See* definition of ''Negotiated Sale'' in MSRB Glossary.

[615] *See* SIFMA Letter I. *See also* letter from Nathan R. Howard, Esq., Municipal Advisor, WM Financial Strategies, dated February 22, 2011 (''Nathan R. Howard WM Financial Strategies Letter'') (stating that when the services provided by a broker-dealer are merely informational non-municipal advisory services, the broker-dealer should be excluded from the definition of municipal advisor).

[616] *See supra* Section III.A.1.b.i. (discussing, among other things, the provision of general information).

[617] *See* SIFMA Letter I.

[618] *See infra* Section III.A.1.c.ii.

[619] *See supra* notes 592 and 593 and accompanying text.

[620] *See, e.g.,* SIFMA Letter I.

obligations as underwriter.[621] If an issuance has closed and the underwriting period[622] has terminated, the broker-dealer cannot be considered to be acting as an underwriter with respect to the issuance of municipal securities. Therefore, any advice or recommendation with respect to the issuance of municipal securities or a municipal financial product given after the termination of the underwriting period generally would be municipal advisory activities. Accordingly, broker-dealers should consider whether particular post-offering work they provide would constitute advice with respect to the issuance of municipal securities or a municipal financial product.

The Commission notes that assisting a municipal entity or obligated person with filing annual financial information, audited financial statements, or material event notices, as required by Rule 15c2–12,[623] after an issuance has closed and after the underwriting period has terminated, would generally be outside the scope of the underwriting exclusion. A determination as to whether or not these activities would constitute advice would be based on all the facts and circumstances.[624]

Broker-Dealers Acting as Placement Agents, Dealer-Managers, and Remarketing Agents

A few commenters emphasized the similarity between private placement agents and underwriters, and suggested that private placement agents should be included in the underwriter exclusion.[625] One commenter stated that a private placement agent offering securities of a municipal entity or obligated person in a private placement under the Securities Act, even if the agent is not serving as an underwriter within the strict meaning of Section 2(a)(11) of the Securities Act, serves almost exactly the same role underwriters play in assisting issuers.[626] This commenter also noted that ''[a]ny uncertainty with respect to a private placement agent's role can be adequately clarified to municipal issuers or obligors through mandatory disclosures.''[627]

The Commission believes that any registered broker-dealer who participates in a particular issuance of municipal securities, whether the broker-dealer is acting as agent (such as in a best-efforts offering) or is acting as principal (such as in a firm commitment offering) would not have to register as a municipal advisor if facts and circumstances indicate that the registered broker-dealer is performing municipal advisory activities that otherwise would be considered within the scope of the underwriting of a particular issuance of municipal securities as discussed above.[628] Registered broker-dealers are subject to regulation under the Exchange Act, regardless of whether they act as principal or agent in a municipal securities offering. The Commission does not believe that the underwriter exclusion should be limited to a particular type of underwriting or particular type of offering.[629] Therefore, if a registered broker-dealer, acting as a placement agent, performs municipal advisory activities that otherwise would be considered within the scope of the underwriting of a particular issuance of municipal securities as discussed above, the broker-dealer would not have to register as a municipal advisor.

In addition, the Commission has determined that a broker-dealer acting as a dealer-manager for a tender offer, without more,[630] would not be municipal advisory activity because tender offers typically involve only the purchase of municipal securities and the purchase is not itself an advisory activity. Similarly, a broker-dealer acting as a dealer-manager for an exchange offer would generally involve only two transactions—the purchase of one security in the tender offer and the underwriting of a particular issuance of municipal securities in exchange for such tendered securities. Since the purchase itself is not advisory activity and the underwriting of the new issue of municipal securities would be excluded under the underwriter exclusion, neither component of the exchange offer would be considered municipal advisory activity.[631]

A few commenters also suggested that remarketing agents should be included in the underwriter exclusion.[632] Generally, the Commission also would not consider a remarketing agent[633] acting only in its capacity as a remarketing agent to be a municipal advisor because the mere remarketing of bonds likely would not constitute an issuance of municipal securities. If, however, the remarketing constitutes a primary offering,[634] then the

[621] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799, 28805, 2811–28812 (July 10, 1989); Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33123–33125 (June 10, 2010); *See also* MSRB Rules G–17; G–19 and G–32.

[622] For purposes of MSRB rules and Exchange Act Rule 15c2–12, the underwriting period is the period in connection with a primary offering of municipal securities ending on the later of the closing of the underwriting or the sale of the last of the securities by the syndicate. *See* definition of ''Underwriting Period'' in MSRB Glossary.

[623] 17 CFR 240.15c2–12.

[624] *See supra* Section III.A.1.b.i (discussing the advice standard in general).

[625] *See* SIFMA Letter I; Chapman & Cutler Letter (concurring with SIFMA that the duties of placement agents with respect to the sale and pricing of municipal securities are similar to the duties of underwriters); Piper Jaffray Letter.

[626] *See* Piper Jaffray Letter.

[627] *See id.*

[628] A registered broker-dealer acting as a placement agent in the issuance of non-municipal securities, however, would not be able to rely on the underwriter exclusion and, based on the facts and circumstances, might be engaged in solicitation activity. *See supra* note 462 and accompanying text (discussing when a placement agent for an investment adviser to a pooled-investment vehicle would be considered a third-party solicitor that falls within the definition of municipal advisor). In addition, a placement agent may have other duties, including a fiduciary duty to its client, that arise as a matter of common law or another statutory or regulatory regime.

[629] Whether or not a particular offering would be a distribution for purposes of Section 2(a)(11) of the Securities Act is a facts and circumstances determination. Whether there is a ''distribution'' does not affect the role of a registered broker-dealer in a municipal securities offering for purposes of this underwriter exclusion.

[630] However, if, for example, the registered broker-dealer provides advice as to the benefits of a tender offer in comparison to the alternative of issuing refunding bonds, then, depending on the facts and circumstances, they might be engaged in municipal advisory activity outside the scope of an underwriting.

[631] Any advice or recommendations to undertake such a tender or exchange offer, or regarding the timing or terms of such tender or exchange offer, would have to be evaluated in the context of that issuance or the issuance of other securities to determine if the advice was advice with respect to the structure, timing, terms, or other similar matters concerning an issuance being underwritten, and thus within the underwriter exclusion.

[632] *See* SIFMA Letter I (stating that activities in which a remarketing agent engages when it resells an issuance in the secondary market are similar to those of an underwriter of a primary issuance by a municipal entity or obligated person); Chapman & Cutler Letter (concurring with SIFMA that the duties of remarketing agents with respect to the sale and pricing of municipal securities are similar to the duties of underwriters).

[633] A remarketing agent is a municipal securities dealer responsible for reselling to investors securities (such as variable rate demand obligations and other tender option bonds) that have been tendered for purchase by their owner. The remarketing agent also typically is responsible for resetting the interest rate for a variable rate issue and may act as tender agent. *See* definition of ''Remarketing Agent'' in MSRB Glossary.

[634] Whether a remarketing is a ''primary offering'' of the municipal securities and whether the remarketing agent is an underwriter for purposes of the Securities Act of 1933 will depend on, among other matters, the level of issuer involvement in the remarketing. Whether a particular remarketing is a primary offering by the issuer of the securities requires an evaluation of relevant provisions of the governing documents, the relationship of the issuer to the other parties involved in the remarketing transaction, and other facts and circumstances pertaining to such remarketing, particularly with respect to the extent of issuer involvement. *See, e.g.,* Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100, 33103 (June 10, 2010).

Continued

remarketing agent would need to evaluate its activities to determine if an exemption or exclusion from registration (such as the underwriter exclusion) applies. A primary offering is an issuance of municipal securities for purposes of the municipal advisor registration regime.[635] Similarly, if the activities of a remarketing agent include providing advice (such as advice with respect to the investment of proceeds) beyond merely determining a remarketing price for bonds that have already been issued and that are not being reoffered, the remarketing agent would need to evaluate its activities to determine if an exception to registration (such as the investment adviser exclusion) applies.

Solely Incidental Services

Many commenters recommended that the municipal advisor registration rules include an exclusion for broker-dealers that is similar in scope to the broker-dealer exclusion under Section 202(a)(11)(C) of the Investment Advisers Act.[636] Specifically, these commenters stated that the Commission should exclude from registration broker-dealers that provide advice that is solely incidental to a transaction.[637] These commenters generally noted that broker-dealers are already regulated by the Commission and should not be subject to additional or duplicative regulation.[638]

The Commission is not adopting an exemption from the definition of municipal advisor for a broker-dealer that engages in municipal advisory activities that are solely incidental to the conduct of its business as a broker-dealer because the Commission believes that it has otherwise addressed commenters' concerns regarding duplicative regulation. As discussed above, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments.[639] As discussed below, based on the application of the adopted rules, broker-dealers that sell securities to municipal entities and obligated persons would generally not be engaging in municipal advisory activity.[640] The application of the adopted rules limits the range of municipal financial products to which duplicative regulation could apply. As noted above, the Commission believes that registered broker-dealers that engage in municipal advisory activities by advising on the investment of proceeds of municipal securities or municipal escrow investments should not be exempt from municipal advisor registration.[641]

Broker-Dealers Selling Securities to Municipal Entities and Obligated Persons

Several commenters suggested that, based on the Proposal, the Commission appears to conclude that ''a broker-dealer that sells a security to a municipal entity where it is not serving as an underwriter'' is engaged in municipal advisory activity, because advice is integral to the sale of securities.[642] That is not the conclusion of the Commission. The municipal advisor registration requirement does not apply in the absence of advice (or solicitation). As noted above, for purposes of the municipal advisor definition, ''advice'' includes, without limitation, a recommendation that is particularized to the needs and circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, based on all the facts and circumstances.[643] Thus, a broker-dealer that effects a transaction that it has not recommended will not be a ''municipal advisor'' with respect to such activity.[644] However, the sale of a security to a municipal entity or obligated person constitutes a municipal advisory activity if: (1) the monies used to purchase such security are proceeds of municipal securities;[645] and (2) in executing such transaction, the broker-dealer also recommends the investment or otherwise offers advice to the municipal entity or obligated person about which securities to purchase or sell.

Another commenter urged the Commission to exclude broker-dealers affiliated with life insurance companies from municipal advisor registration,

Although not applicable in determining whether an offering is a primary offering for purposes of the Securities Act of 1933, the Commission also notes that for purposes of Rule 15c2–12, a ''primary offering'' is defined to mean ''an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities'' that meets certain specified conditions. *See* 17 CFR 240.15c2–12(f)(7). *See also* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994).

[635] *See supra* Section III.A.1.b.vii. (discussing the term ''issuance of municipal securities''). The Commission notes that, although it is likely in such a circumstance for the underwriter exemption to apply, if the agent is engaging in municipal advisory activity that is outside of the scope of underwriting activity and no other exemption or exclusion applies, such agent would be required to register as a municipal advisor.

[636] Section 202(a)(11)(C) of the Investment Advisers Act excludes from the definition of ''investment adviser'' a broker or dealer ''whose performance of [advisory] services is solely incidental to the conduct of his business as a broker or dealer who receives no special compensation therefor.'' 15 U.S.C. 80b–2(a)(11)(C).

[637] *See, e.g.,* Union Bank Letter (stating that advice supplied that is ''solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor'' (Section 202(a)(11) of the Investment Advisers Act) should be excluded from the definition of ''advice''); SIFMA Letter I (stating that ''broker-dealers providing advice that is solely incidental to a transaction should be excluded from the definition of municipal advisor for the same reason that registered investment advisers are excluded (in some instances): they are already regulated''); Financial Services Institute Letter (stating that broker-dealers should be treated as in the Investment Advisers Act, *i.e.,* where a municipal entity enters into an ordinary brokerage transaction, any incidental advice provided in the scope of that relationship should not require the broker-dealer to register as a municipal advisor).

[638] *See, e.g.,* Union Bank Letter (stating that Congress did not intend for broker-dealers and registered investment advisers that already engage in regulated activities for their municipal clients to be subject to the additional layer of regulation that would accompany municipal advisor registration); ICI Letter (noting that broker-dealers that are underwriters are already subject to MSRB Rule G–37 and are also regulated by the Commission as broker-dealers); SIFMA Letter I.

[639] *See supra* note 327 and accompanying text and Rule 15Ba1–1(d)(3)(vii).

[640] *See infra* note 644 and accompanying text.

[641] *See supra* Section III.A.1.b.viii. (discussing the Commission's views on why advice with respect to the investment of proceeds of municipal securities should be subject to municipal advisor registration notwithstanding the existence of other regulatory regimes). *See also infra* Section III.A.1.c.v. (discussing, among other things, the Commission's position that registered investment advisers engaging in municipal advisory activities are only excluded from registration to the extent their activities are investment advice). Likewise, the Commission believes that broker-dealers that engage in municipal advisory activities that are outside of the scope of the underwriting of a particular issuance of municipal securities should be regulated and registered as municipal advisors.

[642] *See* Insurance Companies Letter (stating that the Commission appears to conclude that every time a broker-dealer sells a security to a municipal entity where it is not serving as an underwriter, it must register as a municipal advisor, and that such an approach seems inconsistent with Congressional intent due to pre-existing broker-dealer regulation). *See also* ICI Letter (stating that the Commission proposed that the broker-dealer exclusion means that a broker, dealer or municipal securities dealer would be eligible for the exclusion only when acting in its capacity as an underwriter; and suggesting that the broker-dealer exclusion should include brokers, dealers, and municipal securities dealers who engage in additional activities while serving as underwriters to municipal entities or obligated persons); and Large Public Power Council Letter (expressing concern that the Commission is limiting the broker-dealer exemption to situations in which the broker-dealer is acting as an underwriter).

[643] *See supra* Section III.A.1.b.i. (discussing the advice standard in general).

[644] *See supra* note 162 (discussing the term ''advice'' in contexts outside of the municipal advisor definition).

[645] *See supra* notes 330–343 and accompanying text (discussing the definition of ''proceeds of municipal securities'').

because such ''limited service'' broker-dealers are substantively different from ''full service'' broker-dealers.[646] The Commission notes that broker-dealers affiliated with insurance companies are only required to register as municipal advisors to the extent their activities constitute advice to (or solicitation of) a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities. The mere fact that a broker-dealer is affiliated with a life insurance company and may not sell as wide a range of securities as other broker-dealers is not determinative as to whether such broker-dealer must register as a municipal advisor. As noted in the paragraph above, such broker-dealers may sell securities to a municipal entity without triggering municipal advisor registration.

Broker-Dealers Providing Advice to Individual Plan Participants in a Public Employee Benefit Plan

One commenter expressed concern that broker-dealers that provide investment advice (such as asset allocation) to individual plan participants in the context of a 403(b) retirement plan or a similar defined contribution plan might trigger municipal advisor registration. This commenter recommended that such broker-dealers be specifically excluded from registration.[647]

The definition of municipal advisor states that a municipal advisor is a person that provides advice ''to or on behalf of a municipal entity or obligated person.'' As described above, advice related to investment strategies that would require registration is limited to advice with respect to ''the investment of proceeds of municipal securities . . . and the recommendation of and brokerage of municipal escrow investments.'' [648] Thus, the provision of investment advice to individual plan participants in a public employee benefit plan is not a municipal advisory activity, as long as the individual plan participant is not a municipal entity.[649]

v. Registered Investment Advisers

Exchange Act Section 15B(e)(4)(C) excludes from the definition of municipal advisor ''any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice.'' [650] The Commission proposed in Rule 15Ba1–1(d)(2)(ii) to interpret the statutory exclusion for registered investment advisers from the definition of municipal advisor.[651] Specifically, the Commission proposed that the term ''municipal advisor'' shall not include ''[a]n investment adviser registered under the Investment Advisers Act of 1940 . . . 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.'' [652]

In the Proposal, the Commission stated that a registered investment adviser or an associated person of a registered investment adviser would fall within the definition of municipal advisor and be required to register with the Commission as a municipal advisor if the adviser or associated person engages in any municipal advisory activities (including solicitation) that would not be investment advice subject to the Investment Advisers Act.[653] In the Proposal, the Commission stated its belief that this interpretation is in furtherance of the goals of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities.[654]

As discussed further below, the Commission received several comments in response to its proposed interpretation of the statutory exclusion relating to investment advisers. After careful consideration, to address commenters' concerns, the Commission is modifying proposed Rule 15Ba1–1(d)(2)(ii) to provide certain clarifications. Specifically, Rule 15Ba1–1(d)(2)(ii), as adopted, provides that the definition of municipal advisor excludes ''[a]ny investment adviser registered under the Investment Advisers Act of 1940 . . . or any person associated with such registered investment adviser to the extent that such registered investment adviser or such person is providing investment advice in such capacity.'' Moreover, the Commission clarifies in Rule 15Ba1–1(d)(2)(ii) that ''investment advice,'' solely for purposes of this rule, ''does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person.'' [655]

Interpretation of the Statutory Language

Several commenters stated that the Commission's proposed interpretation is contrary to the plain meaning of the statute and exceeds its intended scope.[656] One commenter stated that the statute excludes ''any'' registered investment adviser—without limitation.[657] Similarly, another commenter stated that the phrase ''who are providing investment advice'' refers only to the immediately previous phrase, ''persons associated with such investment advisers''—not to ''such registered advisers'' themselves.[658] As such, this commenter also encouraged the Commission to interpret the exclusion for investment advisers to apply to all registered investment advisers, not just those who are providing investment advice.[659] Yet another commenter stated that the statute's exclusion of investment advisers ''who are providing investment advice'' cannot be interpreted to only exclude advisers providing ''investment advice'' subject to the Investment Advisers Act, because not all ''investment advice'' requires registration under the Investment Advisers Act (*e.g.,* advice with respect to instruments that are not securities).[660] This commenter stated that the Commission's interpretation would mean that ''[a Commission]-registered investment adviser would be excepted from municipal advisor registration for only some, but not all, of its investment activities.'' [661] The commenter described the Commission's

[646] *See* ACLI Letter (stating that the range of products offered by these limited purpose broker-dealers is typically narrow and focuses upon the distribution of variable insurance contracts and mutual funds; and that such broker-dealers primarily elicit orders from variable contract and mutual fund purchasers).

[647] *See* letter from Adym W. Rygmyr, Associate General Counsel, TIAA–CREF Individual & Institutional Services, LLC, dated February 22, 2011 (''TIAA–CREF Letter'').

[648] Rule 15Ba1–1(b) and Rule 15Ba1–1(d)(3)(vii).

[649] *See supra* Section III.A.1.b.viii. (distinguishing individual contributions from municipal entity contributions to 529 Savings Plans and public retirement plans, among other plans).

[650] 15 U.S.C. 78*o*–4(e)(4)(C).

[651] *See* proposed Rule 15Ba1–1(d)(2)(ii).

[652] *See id. See also* Temporary Registration Rule Release, 75 FR 54467.

[653] *See* Proposal, 76 FR 833.

[654] *See id.*

[655] *See* Rule 15Ba1–1(d)(2)(ii).

[656] *See, e.g.,* IAA Letter; ICI Letter; SIFMA Letter I; and letter from Heidi Stam, Managing Director and General Counsel, The Vanguard Group, Inc., dated February 22, 2011 (''Vanguard Letter'').

[657] *See* Vanguard Letter. *See also* ICI Letter.

[658] *See* ICI Letter. *See also* IAA Letter.

[659] *See* ICI Letter.

[660] *See* SIFMA Letter I. *See also* text accompanying *infra* notes 682 and 683.

[661] SIFMA Letter I.

interpretation as ''without an apparent reason or policy justification.'' [662]

In commenting that registered investment advisers should be excluded broadly from municipal advisor registration, one commenter stated that the municipal advisor registration requirement established by the Dodd-Frank Act was ''primarily aimed at registering unregulated persons.'' [663] Registered investment advisers, in the view of some commenters, are ''already subject to the fiduciary duties and comprehensive registration and disclosure requirements mandated by the Investment Advisers Act.'' [664] The proposal would therefore subject them to ''duplicative and overlapping regulation.''[665]

Some commenters stated that the Commission's proposed interpretation of the exclusion ''interjects ambiguity'' on how to determine whether registered investment advisers must also register as municipal advisors.[666] These commenters stated that the Commission's interpretation would create ''widespread uncertainty'' [667] among investment advisers regarding whether certain of their activities are subject to regulation as municipal advisory activities. One commenter stated that the uncertainty would be compounded by the lack of a definition concerning the kind of investment advice that would exempt a registered investment adviser from the municipal advisor registration requirement.[668]

One commenter requested that the Commission include a non-exclusive interpretation that ''any advice provided by a registered investment adviser pursuant to a written agreement with a municipal entity to whom the adviser owes a fiduciary duty as an investment adviser constitutes the rendering of investment advice.'' [669] The requested interpretation would thereby exempt the investment adviser from registration as a municipal advisor.[670]

As stated above, the Commission is adopting a revised Rule 15Ba1–1(d)(2)(ii). Under the rule the Commission is adopting today, a registered investment adviser could provide advice concerning the investment of proceeds in securities without registering as a municipal advisor because it would be ''providing investment advice'' in its capacity as a registered investment adviser. Further, if the advice is provided pursuant to an advisory agreement that extends to investments in both securities and non-security financial instruments, such advice would still be excluded, because investment advice provided pursuant to the advisory agreement would be investment advice for purposes of Rule 15Ba1–1(d)(2)(ii).[671]

However, the Commission notes that, solely for purposes of the municipal advisor registration rules, pursuant to Rule 15Ba1–1(d)(2)(ii), ''investment advice'' does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person. Notwithstanding that these activities may constitute advice under the Investment Advisers Act, the Commission believes that this approach is appropriate given that Section 15B(e) of the Exchange Act expressly designates these activities as requiring municipal advisor registration.[672] Accordingly, a registered investment adviser that provides these types of advice to municipal entities or obligated persons would need to register as a municipal advisor.

The Commission interprets the statutory language, which provides an exclusion for registered investment advisers and associated persons ''who are providing investment advice,'' as evidence that Congress did not intend to grant a blanket exemption from municipal advisor registration for all registered investment advisers and their associated persons regardless of the activities in which they are engaged. The Commission believes the phrase ''who are providing investment advice'' limits the exclusion. Under this interpretation, if an associated person or a registered investment adviser engages in municipal advisory activities that do not constitute ''investment advice'' for purposes of Rule 15Ba1–1(d)(2)(ii), both the registered investment adviser and the associated person of such adviser engaging in the municipal advisory activities would be ''municipal advisors'' unless eligible for another exclusion or exemption.[673]

The Commission further notes that the municipal advisor registration and regulatory regime relates to issues that are unique to municipal advisory activities—particularly the advice concerning utilization of municipal derivatives, whether and how to issue municipal securities, and the structure, timing, and terms of issuances of municipal securities and other similar matters. The registration of registered investment advisers as municipal advisors, to the extent they engage in these activities, whether or not already subject to the Investment Advisers Act, is necessary to provide the benefits associated with the regulation of persons who engage in municipal advisory activities. Such benefits include, but are not limited to, standards of conduct, training, and testing for municipal advisors that may be required by the Commission or the MSRB, and other requirements unique to municipal advisors that may be imposed by the MSRB.[674]

The Commission believes that the clarifications described above address the comments that the Commission's interpretation introduces ''ambiguity'' and will lead to ''widespread uncertainty'' among registered investment advisers. In particular, permitting a Commission-registered investment adviser to rely on the exclusion when providing any advice under an investment advisory agreement that is subject to the Investment Advisers Act, as long as such advice is not specifically excluded from the definition of ''investment advice'' under Rule 15Ba1–1(d)(2)(ii), will allow registered investment advisers to achieve greater certainty about the scope of the exclusion at the time they enter into an advisory

[662] *Id.*

[663] *See* Vanguard Letter.

[664] *Id. See also* MFA Letter.

[665] *See* Vanguard Letter.

[666] *See, e.g.,* Vanguard Letter.

[667] MFA Letter.

[668] *See* Vanguard Letter.

[669] *Id.*

[670] *See id.*

[671] As discussed below, solely for purposes of the municipal advisor registration rules, ''investment advice'' does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person, even if such activities are under an advisory agreement. Also, investment advice provided pursuant to the advisory agreement would be subject to the anti-fraud provisions of the Investment Advisers Act. *See* 15 U.S.C. 80b–6(1) and 80b–6(2). The Supreme Court has construed Investment Advisers Act Sections 206(1) and (2) as establishing a fiduciary standard for investment advisers that imposes the ''affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation to 'employ reasonable care to avoid misleading'' ' their clients. *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963).

[672] *See* 15 U.S.C. 78*o*–4(e)(4). The Commission notes that this interpretation of the term investment advice relates solely to whether a registered investment adviser, or an associated person of such adviser, would need to register as a municipal advisor.

[673] Consequently, both the registered investment adviser and the associated person would be required to register, unless the associated person meets the requirements of the exemption from registration in Rule 15Bc4–1 discussed below. *See infra* Section III.A.7.

[674] *See supra* note 190.

agreement.[675] If an investment adviser firm engages in a municipal advisory activity that is not within the registered investment adviser exclusion, such as advice concerning the issuance of municipal securities or the utilization of swaps by municipalities, the mere fact that the firm is registered under the Investment Advisers Act would not exempt that firm from registration as a municipal advisor.[676]

As discussed above in Section III.A.1.b.viii., the Commission is narrowing the application of the term ''investment strategies'' from all plans, programs, or pools of assets that invest funds held by or on behalf of a municipal entity to plans or programs for the investment of the proceeds of municipal securities and the recommendation of and brokerage of municipal escrow investments. Accordingly, the municipal advisor registration regime, as adopted, will provide appropriate protection for advice with respect to proceeds of municipal securities while mitigating many of the commenters' concerns with respect to funds of municipal entities other than proceeds of municipal securities. Moreover, because advice provided to fewer types of plans, programs, or pools of assets would require municipal advisor registration, the Commission's exemption for persons providing advice with respect to certain investment strategies will result in fewer registered investment advisers having to register as municipal advisors compared to Rule 15Ba1–1(b) as originally proposed.[677] For example, under the narrow scope of investment strategies, investment advisers who provide advice to public employee benefit plans, participant-directed investment plans such as 529, 403(b) or 457 plans that do not include proceeds of municipal securities would not be required to register as municipal advisors.

As noted above, one commenter suggested that any advice pursuant to a written agreement between an investment adviser and a municipal entity to whom the adviser owes a fiduciary duty should be considered investment advice and thus exclude the adviser from registration as a municipal advisor.[678] In the Commission's view, this approach fails to recognize that the regulatory regime for municipal advisors set forth in the Dodd-Frank Act includes more than a fiduciary duty.[679] Accordingly, unless an exclusion or exemption applies, a municipal advisor must register with the Commission and comply with the applicable MSRB rules.[680]

Ancillary or Additional Advisory Services Provided by Investment Advisers

Several commenters urged the Commission to carve out from the definition of municipal advisor certain investment advisers that provide various specific kinds of advice to municipal entities. For example, some commenters noted that a registered investment adviser may provide clients with services ancillary to its investment advice in ''the normal course of its advisory services.'' [681] Such ancillary service includes advice regarding investments other than securities (*e.g.,* bank deposits, currencies, real estate, futures, and forward contracts),[682] research, and reports.[683] One commenter stated that such services may not subject the adviser providing such services to the Investment Advisers Act but would require the provider to register as a municipal advisor. According to the commenter, an adviser would have to ''segregate its activities into those that are exempt and those which require registration as a municipal advisor and follow potentially conflicting rules.'' [684]

Another commenter stated that managers at investment adviser firms ''would need to regularly monitor each service they provide to municipal entities,'' which would be ''burdensome for a private fund manager or other investment manager'' and ''would divert resources from the performance of [their] core advisory services.'' [685] The commenter stated that the proposed rules could also cause some managers to ''choose to reduce the types of services they provide,'' which could ''harm fund managers and their municipal entity clients.'' [686]

Another commenter suggested an exemption for a ''particularized recommendation regarding the structuring or issuance of municipal securities'' when such advice is provided in the context of the investment adviser providing investment advisory services.[687] For example, according to this commenter, an investment adviser would be exempt if it recommends changes to the terms of a municipal entity's proposed bond offering so that the municipal entity can pay a lower interest rate on the securities and invest the proceeds in less risky investment vehicles.[688]

The Commission carefully considered the comments received, including comments regarding the burden for firm managers to monitor each service provided by the firm to determine whether it would require municipal advisor registration. The Commission, however, is not exempting from the definition of municipal advisor a registered investment adviser that engages in municipal advisory activities that are ''in the ordinary course of'' investment advice or ''ancillary'' to such investment advice. The determination of whether a particular activity is ''in the ordinary course of'' or ''ancillary'' is very much based on facts and circumstances. Thus, the Commission is concerned that such a standard could be easily circumvented and could create a pretext for abuse.[689]

The Commission interprets the registered investment adviser exclusion to include any advice provided pursuant to an advisory agreement. However, Rule 15Ba1–1(d)(2)(ii) excludes from ''investment advice'' advice concerning: (1) Whether and how to issue municipal securities; (2) the structure, timing, and terms of issuances of municipal securities and other similar matters; and (3) municipal derivatives. Additionally, the registered investment adviser exclusion does not cover solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1–1(n). The Commission does not believe that it is necessary to adopt most

[675] *See also* Ancillary or Additional Advisory Services Provided by Investment Advisers section below.

[676] The Commission acknowledges commenters' concerns that there will be overlapping requirements for registered investment advisers that engage in municipal advisory activities, just as there are for investment advisers that engage in broker-dealer activities. The Commission notes that it is permitting investment advisers that have already filed a Form ADV with the Commission to incorporate by reference in their Form MA certain information that they have already supplied in Form ADV. *See infra* Sections II.A.2.

[677] *See supra* Section III.A.1.b.viii. (discussing the term ''investment strategies'' and the exemption pursuant to Rule 15Ba1–1(d)(3)(vii)).

[678] *See supra* notes 669–670 and accompanying text (discussing the Vanguard Letter).

[679] *See* 15 U.S.C. 78*o*–4(c)(1). As noted above, benefits associated with the regulation of municipal advisors also include, but are not limited to, the application of standards of conduct, training, and testing for municipal advisors that may be required by the Commission or the MSRB, and other requirements unique to municipal advisors that may be imposed by the MSRB. *See supra* note 190.

[680] *See, e.g.,* MSRB Rule G–17 (Conduct of Municipal Securities and Municipal Advisory Activities).

[681] *See, e.g.,* MFA Letter.

[682] *See, e.g.,* MFA Letter and ICI Letter. *See also* SIFMA Letter I and American Bankers Association Letter I.

[683] *See, e.g.,* MFA Letter.

[684] American Bankers Association Letter I.

[685] *See* MFA Letter.

[686] *Id.*

[687] SIFMA Letter I.

[688] *See id.*

[689] *See supra* Section III.A.1.c.iv. (discussing broker-dealers selling securities and solely incidental services).

of the interpretations or carve-outs from the municipal advisor definition that commenters suggested because it anticipates that most of these additional services would be covered by advisory agreements. For example, as discussed above, a registered investment adviser that advises a municipal entity to invest the proceeds of an issuance of municipal securities in an asset class other than securities will not be required to register as a municipal advisor, if that advice is provided pursuant to an advisory agreement between the registered investment adviser and the municipal entity. Similarly, if ancillary services are provided pursuant to an advisory agreement and these services are not of the type specifically excluded from ''investment advice'' under Rule 15Ba1–1(d)(2)(ii), the investment adviser exclusion would apply. The Commission believes that its interpretation of the investment adviser exclusion should mitigate commenters' concerns regarding segregating activities into those that are exempt and those that are not and following potentially conflicting rules.[690] The Commission also believes that its interpretation should mitigate commenters' concerns regarding the burden for a firm to monitor its activities [691] because a firm would only need to monitor for the specific types of activities that are excluded from ''investment advice'' under Rule 15Ba1–1(d)(2)(ii) and the activities that are not covered by advisory agreements.

The Commission is also not adopting a commenter's suggestion to create a specific exemption for ''a particularized recommendation regarding the structuring or issuance of municipal securities.'' [692] The Commission believes that an adviser offering advice regarding the issuance of municipal securities, including advice with respect to the structuring, timing, terms, and other similar matters, clearly is a municipal advisor because the statutory definition of municipal advisor expressly includes such activities.

Affiliates of Investment Advisers Providing Municipal Advisory Services

As discussed above, Exchange Act Section 15B(e)(4)(A)(ii) includes in the definition of municipal advisor a person that ''undertakes a solicitation of a municipal entity.'' [693] Section 15B(e)(9), however, excludes a person that controls, is controlled by, or is under common control with a registered investment adviser [694] from the requirement to register as a municipal advisor when it solicits municipal entities or obligated persons on behalf of the affiliated investment adviser.[695] Thus, an affiliate of a registered investment adviser may engage in such solicitation without registering as a municipal advisor. Neither the statute nor the rules, as proposed, otherwise exclude an affiliate of a registered investment adviser from the definition of municipal advisor.

One commenter stated that registered investment advisers ''often assign or delegate management of a portion of their client's assets to an affiliated entity . . . when they seek specialized expertise for particular regions, strategies, or products.'' [696] The commenter stated that such affiliated entities ''are typically part of the same organization as the registered adviser and are subject to the same or similar compliance and management structures.'' [697] Further, they are usually ''organized as separate legal entities rather than branch offices'' for ''tax or other purposes.'' [698] The commenter stated that, because the registered investment advisers themselves are exempt from registration as municipal advisors when they provide investment advice, it would be incongruous to require their affiliates to register as municipal advisors.[699] The commenter further stated that registration would ''simply add costs to the industry and regulators without additional public policy benefits.'' [700]

The Commission disagrees that there should be a general exemption for affiliates of registered investment advisers that engage in municipal advisory activities. The Commission notes that Congress explicitly exempted affiliates from the solicitation prong of the municipal advisor definition, but not from the prong relating to advisory and other activities. Accordingly, the Commission believes that the statute does not contemplate exempting affiliates from municipal advisor registration, except when an affiliate specifically solicits business for its affiliated entity.

Further, as discussed below, the Commission does not believe that any additional exemption is necessary or appropriate. In the case of solicitations, the Commission notes that, although the statute excludes solicitation by an affiliate from the definition of municipal advisor,[701] the Commission would still have regulatory authority over the entity on whose behalf the affiliate is soliciting, as a municipal advisor, if it engages in municipal advisory activities. If the entity is also a registered investment adviser and falls under the investment adviser exclusion in Rule 15Ba1–1(d)(2)(ii), the Commission would continue to have regulatory authority over that entity as a registered investment adviser. In a case where an affiliate of a registered investment adviser is engaged in municipal advisory activities as a municipal advisor, however, the Commission would not necessarily have regulatory authority outside of the municipal advisor registration regime. Also, as discussed more fully above, the Commission's exemption for persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of escrow investments [702] should reduce the likelihood that specialized expertise from affiliates, such as foreign affiliates, will require registration.

Investment Adviser Solicitations and Referrals

Some commenters requested clarification on the exclusion for investment advisers from the solicitation prong of the municipal advisor definition. One commenter requested that the Commission confirm that the exclusion for investment advisers applies to the investment adviser and its employees ''who may solicit municipal entities as part of their regular responsibilities to market the adviser's investment advisory services or who may incidentally discuss the adviser's advisory services with municipal entities.'' [703]

The Commission agrees with this comment and notes that a registered investment adviser that solicits on its own behalf does not fall within the ''solicitation'' prong of the municipal advisor definition. Exchange Act Section 15B(e)(9) provides that the term ''solicitation of a municipal entity or obligated person'' means a

[690] *See supra* note 684 and accompanying text.

[691] *See supra* notes 685–686 and accompanying text.

[692] *See supra* notes 687–688 and accompanying text.

[693] 15 U.S.C. 78*o*–4(e)(4)(A)(ii).

[694] For purposes of this discussion, the term ''affiliate of a registered investment adviser'' means such a person.

[695] *See* 15 U.S.C. 78*o*–4(e)(9).

[696] *See* MFA Letter.

[697] *Id.*

[698] *Id.*

[699] *Id.*

[700] *Id.*

[701] *See* 15 U.S.C. 78*o*–4(e)(9) (defining ''solicitation of a municipal entity or obligated person'').

[702] *See supra* Section III.A.1.b.viii. (discussing the Commission's application of the term ''investment strategies'').

[703] *See* IAA Letter.

communication ''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.'' [704] Thus, Section 15B(e)(9) permits a registered investment adviser and its employees, who market the adviser's investment advisory services, to solicit municipal entities or obligated persons, including discussing the adviser's advisory services, without triggering regulatory obligations, to the extent such solicitation is on behalf of the registered investment adviser. As discussed above, the same is true for affiliates of registered investment advisers.

One commenter expressed concern that an investment adviser providing advice to a client regarding the selection or retention of another investment manager could constitute a solicitation of a municipal entity or obligated person under Section 15B(e)(9) of the Exchange Act.[705] The Commission confirms that a registered investment adviser will not be required to register as a municipal advisor in this scenario, unless it receives direct or indirect compensation and acts on behalf of the recommended investment adviser. Absent such facts, the registered investment adviser is not soliciting on behalf of another broker, dealer, municipal securities dealer, municipal advisor, or investment adviser, and thus would not be engaging in solicitation requiring municipal advisor registration.[706]

State-Registered Investment Advisers

As a result of changes in the threshold for registration as an investment adviser with the Commission,[707] certain entities are not required to register as investment advisers under the Investment Advisers Act and instead are subject to state registration requirements.[708] In the Proposal, the Commission sought comment on whether state-registered investment advisers should be exempt from the municipal advisor definition to the extent they are providing advice that otherwise would be subject to the Investment Advisers Act, but for the operation of a prohibition on, or exemption from, Commission registration.[709]

Several commenters supported an exemption for state-registered investment advisers.[710] One commenter, for example, stated that ''Congress has recognized the efficacy of state regulation of investment advisers.'' [711] Therefore, ''the Commission should similarly recognize the efficacy of state regulation of investment advisers, particularly since the provision of advice to municipal entities is a matter of special interest to state authorities.'' [712] Another commenter stated that state-registered investment advisers are already subject to significant regulation by state regulators, including fiduciary obligations with respect to investment management activities. Consequently, the commenter stated that ''imposing an additional layer of regulation on these persons would not provide an appreciable regulatory benefit or increase the protection of municipal entities or obligated persons.'' [713]

After considering the commenters' views, the Commission is not adopting an exemption for state-registered investment advisers at this time. The Commission notes that the statutory definition of municipal advisor excludes only federally-registered investment advisers. The Commission also notes that state regulation of investment advisers is not always similar to regulation under the Investment Advisers Act. For example, state-registered investment advisers are not subject to the Commission's pay-to-play rule.[714] Furthermore, because the Commission is limiting the kinds of advice with respect to ''investment strategies'' that would require a person to register as a municipal advisor,[715] the Commission believes that fewer state-registered investment advisers will be required to register as municipal advisors than as originally proposed.[716]

Exempt Reporting Advisers

Finally, the Commission is not adopting the suggestion of one commenter to exempt the category of ''Exempt Reporting Advisers'' from registration as municipal advisors.[717] The commenter stated that the Exempt Reporting Advisers exemption from registration under the Investment Advisers Act indicates that policy makers have determined that ''such investment advisers are not of the type that must register with the [Commission] and be subject to Commission oversight as a registered investment adviser.'' [718] The commenter stated that it would be ''consistent with these policy determinations to similarly exempt these advisers from the definition of municipal advisor in connection with providing investment advice to a municipal entity.'' [719]

The Commission does not agree. The Commission believes that, if Exempt Reporting Advisers engage in municipal advisory activities, consistent with the protection of municipal entities and obligated persons, and consistent with the policy objectives of Congress and this rulemaking, they should not be exempt from the municipal advisor registration requirement based on status. Specifically, while Congress determined that Exempt Reporting Advisers do not need to be registered in connection with their investment advisory activities, that does not suggest that Exempt Reporting Advisers should similarly be exempt from regulation as municipal advisors. Therefore, Exempt Reporting Advisers who are exempt from registration as investment advisers must register as municipal advisors if they engage in municipal advisory activities, unless they qualify for an exclusion or exemption. However, as discussed above, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not

[704] 15 U.S.C. 78*o*–4(e)(9).

[705] *See* Insurance Companies Letter.

[706] However, such advice may be considered investment advice under the Investment Advisers Act. *See supra* note 423.

[707] *See* 15 U.S.C. 80b–3a(a).

[708] *See* Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (implementing the statutory shift to the states the responsibility for oversight of investment advisers that have between $25 million and $100 million of assets under management). Approximately 2,400 Commission-registered investment advisers withdrew their registrations and registered with state securities authorities in 2012 and 2013.

[709] *See* Proposal, 76 FR 836.

[710] *See, e.g.,* ABA Letter; MFA Letter; SIFMA Letter I; letter from Rex A. Staples, General Counsel, North American Securities Administrators Association, Inc., dated March 15, 2011 (''NASAA Letter'').

[711] ABA Letter.

[712] *Id.*

[713] SIFMA Letter I.

[714] *See* Investment Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018, 41019 (July 14, 2010) (''Political Contributions Final Rule'').

[715] *See supra* Section III.A.1.b.viii.

[716] For example, under the exemption pursuant to Rule 15Ba1–1(d)(3)(vii), state-registered investment advisers who provide advice to public employee benefit plans (including participant directed plans or plans such as 529 Savings Plans, 403(b) plans, and 457 plans) that do not include proceeds of municipal securities would not be required to register as municipal advisors.

[717] *See* MFA Letter (citing Investment Advisers Act Release No. 3111 (November 19, 2010), 75 FR 77190 (December 10, 2010) (Proposed Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than $150 Million in Assets Under Management, and Foreign Private Advisers)). The Commission subsequently adopted the exemption from registration under the Investment Advisers Act for Exempt Reporting Advisers. *See* Investment Advisers Act Release No. 3222 (June 22, 2011), 76 FR 39646 (July 6, 2011) (Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers).

[718] MFA Letter.

[719] *Id.*

plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.[720] Accordingly, the Commission believes that fewer Exempt Reporting Advisers will be required to register as municipal advisors than as originally proposed. For example, under the narrow scope of investment strategies, Exempt Reporting Advisers who provide advice to private funds that do not include proceeds of municipal securities would not be required to register as municipal advisors.

vi. Registered Commodity Trading Advisors; Swap Dealers

Exchange Act Section 15B(e)(4)(C) excludes from the definition of municipal advisor 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. In the Proposal, the Commission interpreted the statutory exclusion for registered commodity trading advisors and their associated persons 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,[721] and any rules and regulations promulgated thereunder.[722] As proposed in Rule 15Ba1–1(d)(2)(iii), a commodity trading advisor, or an associated person of a commodity trading advisor, would be required to register with the Commission as a municipal advisor if the commodity trading advisor, or an associated person of the commodity trading advisor, engages in any municipal advisory activities that are not advice related to swaps.[723] Further, a commodity trading advisor would be required to 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 under the Commodity Exchange Act or is not a person associated with a registered commodity trading advisor providing advice related to swaps.[724]

The Commission requested comment on, and received several comments regarding, its interpretation of the exclusion for commodity trading advisors.[725] One commenter agreed that the exclusion should only be available when the registered commodity trading advisor is providing advice related to swaps.[726] This commenter believed that Congress intended a single comprehensive municipal advisor regulatory structure to govern advice to municipal entities, particularly in, but not necessarily limited to, the context of a municipal securities offering.[727]

Another commenter expressed concern that the Commission's proposed interpretation of the exclusion could have the unintended consequence of requiring commodity trading advisors to register as municipal advisors if, ''in connection with providing advice about swaps, [a commodity trading advisor] provide[s] clients or prospective clients with research or advice about instruments other than swaps.'' [728] The commenter expressed concern that a registered commodity trading advisor would need to register as a municipal advisor if these ancillary services fall within the scope of municipal advisory activities and are not deemed to be the type of advice described in the exclusion. According to the commenter, the types of ancillary services that a commodity trading advisor may provide to a municipal entity would be subject to ''regular oversight by the [Commission] and CFTC.'' [729] In addition, the commenter stated that the rules would create widespread uncertainty among registered commodity trading advisors regarding whether the services they perform would require registration as municipal advisors.[730] According to the commenter, in order to comply with the proposed rules, managers would need to regularly monitor each service they provide to municipal entities, determine which of the services are municipal advisory activities, and further determine which of the services, if any, may not be deemed to be advice related to swaps.[731]

Another commenter urged the Commission to ''honor a waiver, no-action letters or other remedy from the CFTC regarding the requirement to register as a commodity trading advisor.'' [732] The same commenter stated that ''the CFTC has established a 'private advisor' limited exemption from commodity trading advisor registration.'' [733] Under this exemption, a person does not have to register as a commodity trading advisor if it has not provided commodity trading advice to more than fifteen persons during the preceding twelve months and does not hold itself out to the public as a commodity trading advisor.[734] The commenter suggested that the Commission should implement a similar exemption for purposes of determining when a person must register as a municipal advisor.[735] In addition, the commenter stated that creating an exemption for providing advice to a *de minimis* number of entities would help distinguish between entities whose principal business is to be a municipal advisor and others.[736]

This commenter also expressed concern that a person must register, regardless of the type of swap advice that may be contemplated and irrespective of the relationship between the municipal entity and the person seeking to offer advice.[737] The commenter urged the Commission to consider exclusions based on both: (1) The types of swaps (specifically, limiting municipal derivatives to securities-based swaps); and (2) the types of relationships between the municipal entity and the person who is providing the advice (specifically, providing an exclusion where the advisor acts as an agent and fiduciary of the municipal entity).

Exclusion for Commodity Trading Advisors

The Commission is adopting the interpretation of the statutory exclusion for commodity trading advisors substantially as proposed, with some modifications to provide additional clarity on the scope of advice that

[720] *See supra* Section III.A.1.b.viii.

[721] 7 U.S.C. 1a(47) and 15 U.S.C. 78c(a)(69). Consistent with the statutory exclusion, the Commission's proposed interpretation of the statutory exclusion would not apply when such persons are providing advice with respect to security-based swaps.

[722] *See* Proposal, 76 FR 833. *See also* Temporary Registration Rule Release, 75 FR 54467.

[723] *See* Proposal, 76 FR 833. As an example, the Commission noted that 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. *See id.*

[724] *See id.*

[725] *See id.,* at 837.

[726] *See* MSRB Letter.

[727] *See id.*

[728] MFA Letter.

[729] *Id.* According to the commenter, such ancillary services include providing clients or prospective clients with research or advice about instruments other than swaps in connection with providing advice about swaps.

The Commission notes that providing certain general information to clients or prospective clients, such as research and general information about products, would not be municipal advisory activity. *See supra* Section III.A.1.b.i.

[730] *See* MFA Letter.

[731] *See id.*

[732] ACES Power Marketing Letter.

[733] *See id.* (citing Section 4m(1) of the Commodity Exchange Act).

[734] *See id.*

[735] *See id.*

[736] *See id.*

[737] *See id.*

would be excluded, in response to commenters' concerns. As adopted, Rule 15Ba1–1(d)(2)(iii) provides that the term ''municipal advisor'' shall not include any commodity trading advisor registered under the Commodity Exchange Act or person associated with a registered commodity trading advisor,[738] to the extent that such registered commodity trading advisor or such person is providing advice that is 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 Exchange Act (15 U.S.C. 78c(a)(69)), and any rules and regulations thereunder).[739] The final rule reflects minor, non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions. Accordingly, the exclusion from the municipal advisor definition will not be available to a registered commodity trading advisor, or an associated person of a registered commodity trading advisor, to the extent it engages in municipal advisory activities that are not providing advice related to swaps.[740] As noted in the Proposal, while a registered commodity trading advisor generally could provide advice related to swaps without registering as a municipal advisor, a commodity trading advisor that is not a registered commodity trading advisor would be required to register as a municipal advisor if it provides advice related to swaps to a municipal entity.[741] Similarly, as noted in the Proposal, if a registered commodity trading advisor provides advice with respect to an issuance of municipal securities or any municipal financial product other than the swap, the advisor must register as a municipal advisor.[742]

The Commission is not exempting from municipal advisor registration persons that have received no-action letters from the CFTC or are otherwise exempt from registration as commodity trading advisors.[743] For example, a person may be exempted from registration as a commodity trading advisor precisely because it engages in the types of activities that are more akin to activities in which municipal advisors engage. Thus, the Commission does not believe that a blanket exemption is appropriate at this time. The Commission notes, however, that such entities could apply for no-action or exemptive relief.[744]

The Commission is also not adopting an exemption for services provided by a commodity trading advisor that are solely incidental or ancillary to the commodity trading advisor's advice related to swaps.[745] To the extent the commodity trading advisor is providing general information, however, such activities would not be municipal advisory activities that would subject the advisor to registration as a municipal advisor.[746]

Swap Dealers

Section 15B(e)(4)(C) of the Exchange Act does not include an exclusion from the definition of municipal advisor for swap dealers or security-based swap dealers. In its Proposal, the Commission requested comment generally as to whether there are exclusions from the definition of ''municipal advisor,'' other than those proposed, that the Commission should consider.[747]

Some commenters suggested that the exclusion should be extended to swap dealers and security-based swap dealers because, otherwise, registration as a municipal advisor would be duplicative.[748] One such commenter noted that Sections 731 and 764 of the Dodd-Frank Act have provisions requiring registration by swap dealers and security-based swap dealers with the CFTC and the Commission, respectively, and provisions specifically covering such dealers' activities when acting as advisors to ''special entities,'' which include state and local governments.[749] Another commenter stated that persons that will be considered municipal advisors will often be engaged in business activities other than providing advice to or on behalf of a municipal entity or obligated person.[750] The commenter expressed concern that regulated persons, such as swap dealers, that may also provide advice to a municipal entity or obligated person in connection with their business as swap dealers, may be required to register as municipal advisors.[751] The commenter stated that it would be best to avoid dual or multiple regulations by exempting any advice that is related to, or given in connection with, another regulated activity. The commenter also provided that, in the alternative, the Commission should coordinate the definition of ''advice'' with that of other regulatory regimes.[752]

In its Business Conduct Standards for Swaps, the CFTC adopted certain standards for swap dealers in their dealings with counterparties to swap transactions, as well as for any swap dealer that acts an advisor to a special entity.[753] The CFTC's adopted standards also include a safe harbor from the heightened protections that would otherwise apply when a swap dealer acts as an advisor to a special entity, if:

[738] The Commission notes that Section 15B(e)(4)(C) excludes from the definition of municipal advisor ''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.'' The Commission believes it is reasonable to interpret this exclusion to apply to registered commodity trading advisors and persons associated with a registered commodity trading advisor, as opposed to persons associated with any registered or unregistered commodity trading advisor. The Commission notes that a commenter also suggested this change. *See* MSRB Letter.

[739] *See* Rule 15Ba1–1(d)(2)(iii).

[740] The Commission notes, however, that to the extent a registered commodity trading advisor registers as a municipal advisor, its associated persons that are natural person municipal advisors would be exempt from registration if he or she is an associated person of an advisor that is registered with the Commission pursuant to Section 15B(a)(2) of the Act and the rules and regulations thereunder and engages in municipal advisory activities solely on behalf of a registered municipal advisor. *See supra* Section III.A.7. (discussing Rule 15Bc4–1).

[741] *See* Proposal, 76 FR 833.

[742] *See id.* The commodity trading advisor must also consider whether its activities constitute ''solicitation of a municipal entity or obligated person.'' *See supra* Section III.A.1.b.x. (discussing solicitation of a municipal entity or obligated person).

[743] *See supra* notes 732–735 and accompanying text (discussing comments related to CFTC no action letters and exemptions related to commodity trading advisor registration).

[744] Exchange Act Section 15B(a)(4) provides that the Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any municipal advisor or class of municipal advisors from any provision of Section 15B or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B. *See* 15 U.S.C. 78*o*–4(a)(4). When requesting exemptive relief pursuant to Section 15B(a)(4), a person may follow the procedures for requesting exemptive relief pursuant to Section 36 of the Exchange Act, as set forth in Rule 0–12 under the Exchange Act. *See* 17 CFR 240.0–12.

[745] *See supra* notes 728–729 and accompanying text.

[746] *See supra* Section III.A.1.b.i. (providing guidance on ''advice'' and discussing the provision of general information).

[747] *See* Proposal, 76 FR 838.

[748] *See, e.g.,* Kutak Rock Letter; SIFMA Letter I.

[749] *See* Kutak Rock Letter. This commenter suggested that the Proposal should be harmonized with other provisions of the Dodd-Frank Act specifically addressing swap practices.

[750] *See* SIFMA Letter I. The commenter stated that a swap dealer that provides advice in connection with its other business activity may be subject to CFTC regulation and, absent an exemption, would become subject to additional regulation as a municipal advisor. *See id.*

[751] *See id.*

[752] *See id.* In this context, this commenter cited as an example the proposed CFTC business conduct standards for swaps.

[753] CFTC Rule 23.440(c)(1) provides that a swap dealer that acts as an advisor to a special entity has ''a duty to make a reasonable determination that any swap or trading strategy involving a swap recommended by the swap dealer is in the best interests of the Special Entity [as defined in CFTC Rule 23.401(c)].''

such swap dealer does not express an opinion as to whether the special entity should enter into a recommended swap or trading strategy involving a swap that is tailored to the particular needs or characteristics of the special entity; the special entity represents in writing that it will not rely on recommendations provided by the swap dealer, and will rely on advice from an independent representative; and the swap dealer discloses to the special entity that it is not undertaking to act in the best interests of the special entity as otherwise required under the CFTC's standards.[754] Consistent with this approach and for the reasons described below, the Commission believes that it is appropriate to provide an exemption for certain swap dealers.

Specifically, to address commenters' concerns, the Commission is exempting any swap dealer registered under the Commodity Exchange Act or associated person of the swap dealer recommending a municipal derivative or a trading strategy that involves a municipal derivative, so long as the registered swap dealer or associated person is not ''acting as an advisor'' to the municipal entity or obligated person with respect to the municipal derivative or trading strategy pursuant to Section 4s(h)(4) of the Commodity Exchange Act and the rules and regulations thereunder.[755] For purposes of determining whether a swap dealer is ''acting as an advisor'' under Rule 15Ba1–1(d)(3)(v), the municipal entity or obligated person involved in the transaction will be treated as a ''special entity'' [756] under Section 4s(h)(2) of the Commodity Exchange Act and the rules and regulations thereunder (regardless of whether such municipal entity or obligated person is otherwise a ''special entity'').[757]

The Commission believes an exemption for swap dealers is appropriate because, as discussed below, the exemption will apply the standards that are applicable under the CFTC's existing regulatory regime. As under such regime, the exemption will also preserve consistent and comparable protections for municipal entities and obligated persons. For example, for the exemption for registered swap dealers to apply, a municipal entity or obligated person must have an independent representative who is subject to a duty to act in the best interests of its client.[758] The Commission notes that independent representatives would likely be commodity trading advisors, municipal advisors, investment advisers, or ERISA fiduciaries [759] that are also subject to, or may become subject to,[760] a fiduciary duty to their clients.[761] Moreover, regardless of whether a municipal entity or obligated person is a special entity, the swap dealer will need to comply with any applicable suitability standards and disclosure requirements, which should offer another measure of protection for municipal entities and obligated persons in addition to those noted above. Further, in the context of interactions between swap dealers and municipal entities and obligated persons, the exemptions will incorporate the standards provided by the CFTC's Business Conduct Standards for Swaps, which include a requirement that the swap dealer disclose that it is not undertaking to act in the best interest of the special entity.[762] Therefore, municipal entities and certain obligated persons may already be familiar with the notion that exempt swap dealers are not undertaking to act in their best interest when recommending a swap or a trading strategy involving a swap and could more appropriately evaluate such recommendation. In addition, the Commission believes the standards provided by the CFTC's Business Conduct Standards for Swaps are appropriate for the swap dealer exemption from the definition of municipal advisor, because they will help provide clarity about: (1) when a swap dealer must register as a municipal advisor; and (2) its relationship with municipal entities and obligated persons.

For these reasons, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt swap dealers from the definition of municipal advisor, subject to the limitations described above, and therefore not require such dealers to register as municipal advisors.

The Commission is not adopting, at this time, an exemption for security-based swap dealers. As a general matter, the Commission understands that municipal entities currently do not typically enter into security-based swap transactions.[763] The Commission also notes security-based swap dealers may, to the extent they would otherwise meet the definition of ''municipal advisor,'' qualify for a different exemption, such as the exemption in Rule 15Ba1–1(d)(3)(vi) when the municipal entity or obligated person is otherwise represented by an independent registered municipal advisor. Further, the Commission notes that such entities could apply for no-action or exemptive relief.[764] When the Commission considers adopting external business conduct rules for security-based swap dealers, the Commission may also consider amending the municipal advisor definition to include an exemption for security-based swap dealers that is similar to the exemption for swap dealers.[765]

vii. Accountants, Attorneys, Engineers and Other Professionals

The definition of municipal advisor in Exchange Act Section 15B(e)(4) excludes attorneys offering legal advice or providing services of a traditional legal nature and engineers providing engineering advice.[766] As discussed more fully below, the Commission proposed interpretations of the attorney and engineer exclusions and also

[754] *See* Business Conduct Standards for Swaps, *supra* note 275. *See also* CFTC Rule 23.440 (17 CFR 23.440).

[755] *See* Rule 15Ba1–1(d)(3)(v)(A).

[756] Special entity is defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and the rules and regulations thereunder. *See* 17 CFR 23.401(c) (defining ''special entity,'' for purposes of business conduct requirements for swap dealers and major swap participants) and *supra* note 275 (discussing the protections provided by the Dodd-Frank Act for special entities with respect to derivative transactions).

[757] *See* Rule 15Ba1–1(d)(3)(v).

[758] This is consistent with the blanket exemption where a municipal entity or obligated person is represented by an independent registered municipal advisor. *See* Rule 15Ba1–1(d)(3)(vi).

[759] *See* Business Conduct Standards for Swaps, 77 FR 9738.

[760] The Commission notes that the CFTC has indicated that it is ''considering developing rules for [commodity trading advisors] that are comparable to rules adopted by the [Commission] or the MSRB for municipal advisors.'' *See* Business Conduct Standards for Swaps, 77 FR 9739. Additionally, the CFTC has stated that it believes it has harmonized its rules with the regulatory regime for municipal advisors and will continue to work with the Commission as the Commission's proposed rules for the registration of municipal advisors are finalized. *Id.*

[761] Municipal advisors, investment advisers, and ERISA fiduciaries all owe fiduciary duties to their clients.

[762] *See supra* note 754 (setting forth the disclosure requirements for swap dealers under CFTC Rule 23.440).

[763] *See, e.g.,* Transcript of the U.S. Securities and Exchange Commission Birmingham Field Hearing on the State of the Municipal Securities Market at 241 and 244.

[764] *See, e.g., supra* note 744.

[765] The Commission has proposed standards for security-based swap dealers that are similar to those that the CFTC has adopted. *See* Business Conduct Standards for Security-Based Swaps. Comments received by the Commission on this proposal are available at *http://www.sec.gov/comments/s7-25-11/s72511.shtml.*

[766] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

proposed a limited exemption for accountants.[767]

Accountants Providing Attest Services

Exchange Act Section 15B(e)(4) does not explicitly exclude accountants from the definition of municipal advisor. In the Proposal, however, the Commission proposed to interpret the statutory definition of municipal advisor to exempt any accountant, unless the accountant engages in municipal advisory activities other than preparing or auditing financial statements or issuing letters for underwriters. In other words, the Commission proposed to exempt from the municipal advisor definition accountants preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[768] In the Proposal, the Commission noted that it was not appropriate to exempt accountants entirely, 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.[769]

The Commission requested comment on its proposed exemption for accountants. In particular, the Commission requested comment on whether the Commission should provide this exemption and whether there are additional types of accounting services that should fall under the exemption.[770]

The Commission received approximately 11 comment letters that addressed the proposed accountant exemption. Two commenters expressed support for the accountant exemption as proposed and did not suggest any changes.[771] Several commenters, however, believed that the proposed accountant exemption was too narrow and recommended including additional services under the exemption.[772]

Several commenters recommended that attest, not just audit, services should be part of the accountant exemption.[773] The performance of attest services is generally limited to certified public accountants by state regulation and professional standards.[774] One commenter noted that audit services are a subset of the broader category of attest services and both are subject to similar professional standards, including an ''independence'' requirement.[775] Another commenter also provided examples of services in this broader category of attest services, all of which it believed would be subject to professional standards: (1) Examinations, compilations, or agreed-upon procedures engagements on projections or forecasts using AICPA Statements on Standards for Attestation Engagements (''SSAEs''); (2) performance of other types of agreed-upon procedures engagements; (3) compliance audits (*e.g.,* opinions on compliance with federal, state, or local compliance requirements); and (4) review of debt coverage requirements on outstanding bonds and verification of calculations of escrow account requirements for advance refunding of bonds.[776]

Further, one commenter asked if the following services would be included or excluded from the accountant exemption: (1) The preparation of unaudited annual financial statements; (2) the provision of annual independent audits of a municipal entity; (3) the review and preparation of pro forma maturity schedules of principal and interest on proposed bond issues; (4) the provision of budget, audit, and other information to credit rating agencies; and (5) the preparation of the ''front end'' of offering statements and financial and demographic information.[777]

Several commenters also recommended extending the exemption to services that non-certified public accountants can provide but are subject to regulation and professional standards. For example, two commenters stated that advice related to Generally Accepted Accounting Principles (''GAAP'') and tax advice related to municipal securities and derivatives should also fall under the accountant exemption.[778]

In addition to these services, another commenter recommended, more generally, that the Commission extend the accountant exemption to the provision of non-attest services, such as certain tax and actuarial services.[779] Two other commenters stated that accountants and other consultants who provide feasibility studies should not be considered municipal advisors.[780]

One commenter suggested that accountants of conduit borrowers should be exempt as municipal advisors.[781]

The Commission has carefully considered issues raised by commenters on the Proposal and is expanding the accountant exemption to include accountants providing audit or other attest services. Specifically, Rule 15Ba1–1(d)(3)(i), as adopted, provides that the term ''municipal advisor'' shall

[767] *See* proposed Rule 15Ba1–1(d)(2)(iv)–(vi) and Proposal, 76 FR 833–834.

[768] *See* proposed Rule 15Ba1–1(d)(2)(vi).

[769] *See* Proposal, 76 FR 833. The Commission noted that accountants may also be engaged by municipal entities to provide other services, such as conducting feasibility studies or preparing financial projections and that, 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. *See id.,* at 833, notes 127–128 and accompanying text.

[770] *See id.,* at 837.

[771] *See* MSRB Letter (agreeing that the exemption should apply solely when an accountant is preparing financial statements, auditing financial statements, or issuing bring down, comfort or ''agreed upon procedures'' letters for underwriters); letter from Kim M. Whelan, Co-President, Acacia Financial Group, Inc., dated February 22, 2011 (''Acacia Financial Group Letter'') (stating that ''[t]o the extent accountants or engineers provide advice regarding municipal financial products or issuance of municipal securities, accountants and engineers should be considered Municipal Advisors'').

[772] *See, e.g.,* State of Indiana Letter; letters from Deloitte LLP, dated February 22, 2011 (''Deloitte Letter''); Gerald G. Malone, H.J. Umbaugh & Associates, dated February 22, 2011 (''Umbaugh Letter''); letter from Susan S. Coffey, Senior Vice President, Member Quality and International Affairs, American Institute of Certified Public Accountants (''AICPA''), dated February 25, 2011 (''AICPA Letter''); and Gary Higgins, President, Registered Municipal Accountants Association of New Jersey, dated February 22, 2011 (''RMAA Letter'').

[773] *See, e.g.,* Deloitte Letter (stating that ''[a]udit services are a subset of the broader category of attest services. . . and we see no reason for the final rule to distinguish between the two''); Umbaugh Letter (stating that attest services and tax services (*e.g.,* arbitrage rebate calculations on behalf of issuers) do not appear to fit the ''municipal advisor'' definition); letter from KPMG LLP, dated February 22, 2011 (''KPMG Letter'') (recommending that the Commission include, at a minimum, specific exemptions for attest services in the accountant exemption).

Commenters referred to the definition of the term ''attest engagements'' by the AICPA as ''engagements . . . in which a certified public accountant in the practice of public accounting . . . is engaged to issue or does issue an examination, a review, or an agreed-upon procedures report on subject matter, or an assertion about the subject matter . . . that is the responsibility of another party.'' *See* Deloitte Letter (citing AICPA Attestation Standards AT § 101.01). The Uniform Accountancy Act, which has been used as a basis for state regulation of certified public accountants, incorporates similar concepts. (*See, e.g.,* Section 14(a) of The Uniform Accountancy Act (5th ed. 2007), available at *http://www.aicpa.org/Advocacy/State/StateContactInfo/uaa/DownloadableDocuments/UAA_Fifth_Edition_January_2008.pdf*).

[774] *See, e.g.,* AICPA Code of Professional Conduct ET 201.01, 202.01; *see also* AICPA Attestation Standards AT § 101.06 (providing that ''[a]ny professional service resulting in the expression of assurance must be performed under AICPA professional standards that provide for the expression of such assurance''); *see also, e.g.,* The Uniform Accountancy Act (5th ed. 2007), available at *http://www.aicpa.org/Advocacy/State/StateContactInfo/uaa/DownloadableDocuments/UAA_Fifth_Edition_January_2008.pdf.*

[775] *See* Deloitte Letter.

[776] *See* AICPA Letter.

[777] *See* RMAA Letter.

[778] *See* KPMG Letter; AICPA Letter.

[779] *See* Deloitte Letter.

[780] *See* Gilmore & Bell Letter; State of Indiana Letter.

[781] *See* South Lake County Hospital Letter.

not include any accountant to the extent that the accountant is providing audit or other attest services, preparing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[782] To the extent commenters requested clarification regarding whether specific activities would be exempted, such activities would be exempted if they constitute audit or other attest services,[783] the preparation of financial statements, or the issuance of letters for underwriters for, or on behalf of, a municipal entity or obligated person.

The Commission believes that it is appropriate to include attest services in general, and not just audit services in particular, among the services that fall under the exemption. Both audit and other attest services are generally subject to regulation and professional standards,[784] including independence requirements. Such independence requirements could potentially conflict with municipal advisors' fiduciary duty to the municipal entities they advise.[785] Accountants providing attest services are also required to meet general standards related to adequate technical training and proficiency, adequate knowledge of subject matter, suitability and availability of criteria, and the exercise of due professional care.[786] Accordingly, the Commission believes that attest services, and not just audit services, exemplify the types of services typically performed by accountants that should not constitute the provision of advice within the meaning of Exchange Act Section 15B(e)(4)(A)(i).[787]

The Commission has considered whether various non-attest services should also be included in the accountant exemption, such as tax services (including arbitrage rebate services[788]) and advice relating to GAAP. While the Commission acknowledges that such non-attest services may represent activities provided by accountants, such services are neither necessarily provided by certified public accountants, nor necessarily subject to similar regulation and professional standards as attest services. The Commission does not believe it is appropriate to expand the exemption to cover activities or services that non-accountants could perform. Accordingly, the Commission is not including non-attest services in the accountant exemption. Nevertheless, a person providing non-attest services would only be required to register as a municipal advisor if such services are within the scope of the municipal advisory activities definition.

Several commenters noted that non-attest services should be included because accountants are already subject to other regulatory regimes, including those of state boards of accountancy, the Commission, and the Public Company Accounting Oversight Board.[789] The Commission does not believe those regimes, which are principally focused on the certified public accountant's provision of attest services,[790] are sufficient to warrant further expansion of the accountant exemption.

As stated above and in the Proposal, accountants may provide advice to municipal entities, including advice about the structure, timing, terms, and other similar matters, and such advice may be the basis for an issuance of municipal securities. Therefore, the Commission does not believe that it is appropriate to exempt accountants from the definition of municipal advisor entirely. In addition, although attest services are often included as part of larger engagements, such as the examination of prospective financial information that is included as part of a feasibility study or acquisition study,[791] the accountant exemption includes only the attest portion of these engagements and does not cover all services that comprise such engagements.[792]

The Commission also notes that, according to the exemption provided by Rule 15Ba1–1(d)(3)(i), feasibility studies concerning the issuance of municipal securities or municipal financial products for which an accountant provides only audit or attest services would not require the accountant to register as a municipal advisor.[793]

Lastly, with respect to accountants of obligated persons, the Commission notes that such accountants will be treated consistently with accountants of municipal entities.[794]

For these reasons, the Commission finds it consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt accountants from the definition of municipal advisor, subject to the limitations described above.

Attorneys Offering Legal Advice or Providing Services of a Traditional Legal Nature

Section 15B(e)(4)(C) of the Exchange Act excludes from the municipal advisor definition attorneys offering legal advice or providing services that are of a traditional legal nature. In the Proposal, the Commission proposed to interpret the exclusion to mean 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.[795] In addition, the Commission proposed to interpret advice from an attorney to his or her client with respect to the structure, timing, terms, and other similar matters concerning the issuance of municipal securities or municipal financial products to be services of a traditional legal nature, if such advice is provided within an attorney-client relationship specifically related to the issuance of municipal securities or such municipal

[782] *See* Rule 15Ba1–1(d)(3)(i). In addition to adopting an expanded accountant exemption, as compared to the Proposal, the Commission is also making minor, non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions.

[783] *See supra* notes 776–777.

[784] *See, e.g.,* AICPA Code of Professional Conduct ET 201.01, 202.01; *see also* AICPA Attestation Standards AT § 101.06 (providing that ''[a]ny professional service resulting in the expression of assurance must be performed under AICPA professional standards that provide for the expression of such assurance'').

[785] *See* AICPA Attestation Standards AT § 101.35 (''The practitioner must maintain independence in mental attitude in all matters relating to the engagement.''), 101.36 (''The practitioner should maintain the intellectual honesty and impartiality necessary to reach an unbiased conclusion about the subject matter or the assertion. This is a cornerstone of the attest function.'').

[786] *See* AICPA Attestation Standards AT § 101.19 to 101.41.

[787] *See* 15 U.S.C. 78*o*–4(e)(4)(A)(i).

[788] *See, e.g., supra* note 773.

[789] *See, e.g.,* KPMG Letter.

[790] *See* Sarbanes-Oxley Act of 2002, as amended by Section 982 of the Dodd-Frank Act. 15 U.S.C. 7201 *et seq. See, specifically,* Section 102 of the Sarbanes-Oxley Act of 2002. 15 U.S.C. 7212.

[791] *See* AICPA Attestation Standards AT § 101.05.

[792] For example, the exemption would not apply to accountants that provide consulting services to municipal entities, including advice with respect to the structure, timing, terms, or other similar matters concerning an issuance of municipal securities or a municipal financial product, modeling future debt service coverage, suggesting future rate schedules, tax advice related to municipal securities and derivatives, and other non-attest services that constitute municipal advisory activities. The scope of the accountant exemption is different from the scope of the investment adviser exclusion because, unlike accountant engagements that include attest as well as other services, investment advice provided pursuant to an advisory agreement would be subject to the anti-fraud provisions of the Investment Advisers Act and a fiduciary duty. *See supra* note 671.

[793] This is consistent with the approach for engineers that provide feasibility studies discussed below in this section.

[794] *See* Rule 15Ba1–1(d)(3)(i). *See also* South Lake County Hospital Letter.

[795] *See* Proposal, 76 FR 833–834. *See also* proposed Rule 15Ba1–1(d)(2)(iv).

financial products in conjunction with related legal advice.[796] Further, in the Proposal, the Commission indicated that, for example, the following advice would be considered to be services of a traditional legal nature: (1) 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; (2) advice concerning the tax consequences of alternative financing structures; or (3) 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.[797] The Commission, however, also stated in the Proposal that the following advice would not be services of a traditional legal nature: (1) advice concerning the financial feasibility of a project or a financing; (2) advice estimating or comparing the relative cost to maturity of an issuance, depending on various interest rate assumptions, or (3) advice recommending a particular structure as being financially advantageous under prevailing market conditions.[798]

The Commission requested comment on numerous aspects of the attorney exclusion, including whether the exclusion should only apply to legal services to an attorney's municipal or obligated person client; whether the Commission should provide an exclusion for all an attorney's activities as long as that attorney has an attorney-client relationship with the municipal entity or obligated person; and whether the meaning of the term ''services of a traditional legal nature'' is sufficiently clear.[799]

The Commission received approximately 20 comment letters regarding the attorney exclusion. Two commenters generally supported the proposed interpretation of the exclusion,[800] although one of these commenters recommended that the Commission continue to refine the attorney exemption. The commenter suggested that exempted activity ''consists of advice on legal matters such as the legal ramifications of such structure, timing, terms and other matters, the appropriate documentation thereof, and matters of a similar legal nature.'' [801] Meanwhile, two other commenters stated that they did not support the exclusion because advice provided by attorneys to financing teams is generally financial in nature and represents municipal advisory activity.[802]

The majority of commenters did not support the proposed interpretation of the statutory exclusion, stating that the interpretation is too limited in scope.[803] One commenter sought clarification that the statutory exclusion for attorneys covers all ''legal advice'' and that the ''traditional legal nature'' limitation applies only to ''services'' provided by attorneys.[804] Some commenters noted the difficulty of separating ''services of a traditional legal nature'' from advice that could be considered ''financial'' in nature.[805] These commenters also noted that roles of outside counsel are not neatly compartmentalized, and that municipal clients benefit from attorneys' ''financial'' advice.[806] Other commenters indicated that attorneys should feel free to provide advice to municipal entities and obligated persons without fear of falling subject to municipal advisor registration.[807] Some commenters questioned whether registration of attorneys was necessary, even if they provided financial advice. These commenters reasoned that attorneys already have a fiduciary duty to their clients, in addition to state ethics laws and well-established disciplinary processes for those who breach their fiduciary duties.[808]

Several commenters stated that the attorney exclusion should not depend on a pre-existing attorney-client

[796] As an example, the Commission stated that advice comparing the structures, terms, or associated costs of the 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. *See* Proposal, 76 FR 834.

[797] *See id.*

[798] *See id.*

[799] *See id.,* at 837.

[800] *See* MSRB Letter I (supporting the language of the attorney exclusion, ''including in particular that such exclusion applies solely when an attorney is providing legal advice or services that are of a traditional legal nature to a client that is a municipal entity or obligated person''); letter from Robert Doty, AGFS, dated March 1, 2011 (''Doty Letter II'') (stating that: ''[i]n the municipal securities market . . . it has long been recognized that attorneys providing other services are stepping beyond their recognized roles'').

[801] *See* MSRB Letter I.

[802] *See* letter from John J. Haas, President, Ranson Financial Consultants, LLC, dated February 17, 2011 (''Ranson Financial Consultants Letter'') (''How an attorney can give advice on whether an entity should be rated or not, and/or to walk and [sic] entity through the rating process without being a registered Municipal Advisor is not understandable . . . . The Commission, in principal [sic], is allowing bond attorney and local attorneys to continue to act as Municipal Advisors without the requirement to be registered as one.''); Acacia Financial Group Letter (stating that attorney 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) is not service that should be included in the definition of traditional legal services as it is at the heart of the advice that a municipal advisor provides and is directly financial in nature).

[803] *See, e.g.,* NABL Letter (''[A]ttorneys have an obligation to give frank advice to their clients and . . . not to limit their advice to strictly legal issues if their clients otherwise would be prejudiced . . . . The attorney should be free to discuss the possible pros and cons of different transaction structures if more than one is legally authorized, including practical consequences that are financial in nature . . . . [T]he exclusion for attorneys should not be afforded only for advice given to clients, but should apply to all advice that one must be licensed as an attorney to give or that is given as part of a traditional legal nature, or that is incidental to such services.''); letter from Wm. Raymond Manning, President & CEO, Manning Architects, dated February 21, 2011 (''Manning Architects Letter'') (''[B]y requiring attorneys for the government entity to register if they stray beyond pure legal advice . . . the SEC will be chilling some of the most effective advice that a lawyer can provide. Attorneys often challenge the analysis of experts and other advisors to their clients and if that challenge strays beyond the purely legal, then those lawyers may be fearful to fully and ably represent their clients. The Commission should consider carefully if chilling a lawyer's advice to a client serves the interests it seeks to protect.''); Sherman & Howard Letter (''We believe that in so limiting the exemption for attorneys, the Commission is going beyond what Congress intended, as shown by the language of the Act, and beyond what Congress has authorized.'').

[804] *See* NABL Letter.

[805] *See, e.g.,* letter from Joe B. Allen, Allen Boone Humphries Robinson LLP, dated February 21, 2011 (''Allen Boone Humphries Robinson Letter'') (''''[S]ervices that are of a traditional legal nature' is vague, especially for bond counsel. Bond counsel's consultation with a client necessarily includes 'structure, timing, terms and other similar matters.''').

[806] *See, e.g.,* American Municipal Power Letter; Squire Sanders & Dempsey Letter (''[C]ertain advice and services the Commission may identify as financial in nature are in fact an integral part of and inseparable from legal advice and services that attorneys have traditionally been expected to provide to their clients in connection with municipal finance transactions'' and attorneys should be excluded from the application of the proposed rules ''when the attorney is providing legal advice or services, including ancillary financial or related advice or services relating to a municipal finance transaction or municipal financial product, or providing information concerning developments in the municipal marketplace.''); letter from Edward G. Henifin, General Manager and Steven G. de Mik, Director of Finance, Hampton Roads Sanitation District, dated February 22, 2011 (''Hampton Roads Sanitation District Letter'').

[807] *See, e.g.,* NABL Letter; American Municipal Power Letter; Hampton Roads Sanitation District Letter; Rose Letter; letter from Susan Combs, Texas Comptroller of Public Accounts, dated February 22, 2011 (''Texas Comptroller of Public Accounts Letter'').

[808] *See, e.g.,* NABL Letter; State of Indiana Letter; Squire Sanders & Dempsey Letter.

relationship.[809] Some commenters generally noted that attorneys are often expected to provide counsel to all financing team members, and not only to the attorney's clients that are municipal entities and obligated persons.[810] One commenter stated that ''others in the bond issue clearly rely upon the legal advice of bond counsel, including the . . . obligated person in a conduit financing. The very role of bond counsel is to provide advice to the entire group relative to the state law authority for the issuance of the bonds (the approving legal opinion) and the federal and state tax status of the interest on the bonds.'' [811] Similarly, another commenter noted that bond counsel has at times been described as representing ''the transaction'' rather than any particular party to an offering.[812] Accordingly, the commenter asked the Commission to clarify if in such instance the bond counsel would be viewed as having a municipal entity or obligated person as a client. Finally, commenters also stated that attorneys representing parties other than municipal entities and obligated persons, such as underwriter's counsel, are called upon to provide their views or advice to the entire team, yet the attorney exclusion, as proposed, would not pertain to these attorneys.[813]

Some commenters noted that, if an attorney is required to register as a municipal advisor in order to provide advice to non-clients on the financing team, the resulting municipal advisory relationship would create a fiduciary duty for the attorney to the non-client. According to these commenters, such a fiduciary duty would directly conflict with the attorney's pre-existing fiduciary duties to its clients, and thus potentially infringe upon state rules of professional responsibility.[814]

Other commenters indicated that many law firms provide to both clients and non-clients educational material about municipal bond financings through newsletters and emails and expressed concern that such activity would not be covered under the proposed interpretation of the attorney exclusion.[815] Moreover, some commenters indicated that attorneys typically provide legal advice to a client, both before a formal attorney-client relationship is formed and after the attorney-client relationship has ended (*e.g.,* upon the closing of a bond transaction).[816] One commenter noted that it is often asked to provide its view or advice on matters relating to prior transactions for which it served as bond counsel or in another legal capacity.[817]

The Commission has carefully considered issues raised by commenters on the Proposal and is modifying its interpretation of the statutory attorney exclusion to provide that attorneys are excluded from the definition of municipal advisor to the extent that the attorney is offering legal advice or providing services that are of a traditional legal nature with respect to the issuance of municipal securities or municipal financial products to a client of such attorney that is a municipal entity, obligated person, or other participant in the transaction. The Commission recognizes that legal advice and services of a traditional legal nature in the area of municipal finance inherently involves a financial advice component. By contrast, to the extent an attorney represents himself or herself as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, the attorney is not excluded with respect to such financial activities under Rule 15Ba1–1(d)(2)(iv) as this type of advice and services would be outside the statutory exclusion.[818]

By revising its interpretation of the exclusion in this way and providing guidance, the Commission intends to clarify that all legal advice or services of a traditional legal nature involving the issuance of municipal securities or a municipal financial product are covered under the attorney exclusion. This approach addresses many comments received by the Commission noting the negative impacts of requiring attorneys in municipal finance transactions to limit their advice and services to those related strictly to legal issues and describing the difficulty involved in complying with such limitations given the nature of the legal advice and services attorneys traditionally have provided, and are expected to provide, in municipal finance transactions.[819] In addition, if another participant in the issuance or transaction, who is not a client of the attorney, receives and acts upon the legal advice the attorney provides to its client, the attorney will not have to register as a municipal advisor. In this situation, the attorney is still only advising its client, even if the advice affects the actions of other participants in the transaction. This approach addresses commenters' concerns that bond counsel and other attorneys routinely share their views with non-client parties in a municipal finance transaction in the context of working group discussions.[820] Because such attorney would not be required to register as a municipal advisor, he or she would not be subject to an additional fiduciary duty that could potentially conflict with the attorney's existing fiduciary duty to his or her client.[821] By revising its interpretation of the exclusion to include a client of such attorney that is a municipal entity, obligated person, or other participant in the transaction, the Commission intends to be responsive to the comments received that attorneys representing participants other than a municipal entity or obligated person should be included in the exemption.[822]

[809] *See, e.g.,* State of Indiana Letter (''Not all attorneys who are integrally involved in a typical municipal finance transaction have an attorney/client relationship with the municipal entity issuing the bonds . . . . The responsibilities of these counsel are relatively standard at the core, but can be varied in accordance with the agreements of the various parties to the transaction to produce the most efficient and effective final product for the municipal entity . . . . All these attorneys need absolute comfort that their contributions will not be considered municipal advisory services which are outside the scope of the exemption simply because they are not engaged by the municipal entity.''); Squire Sanders & Dempsey Letter (stating that imposing a federal fiduciary duty upon an attorney with respect to a non-client municipal entity or obligated person will create potential ethical dilemmas regarding conflicts of interest rules under state professional conduct rules that already impose a prior competing fiduciary duty in favor of the attorney's client); Chapman and Cutler Letter; Gilmore & Bell Letter; Sherman & Howard Letter; and Texas Comptroller of Public Accounts Letter.

[810] *See, e.g.,* Gilmore & Bell Letter; NABL Letter.

[811] *See* Gilmore & Bell Letter.

[812] *See* MSRB Letter.

[813] *See, e.g.,* State of Indiana Letter; Squire Sanders & Dempsey Letter; Sherman & Howard Letter; NABL Letter.

[814] *See, e.g.,* NABL Letter (recommending that the Commission clarify the attorney exclusion to prevent the imposition of fiduciary duties to issuers that are inconsistent with the duties of lawyers under their state professional conduct rules); Sherman & Howard Letter; Squire Sanders & Dempsey Letter.

[815] *See, e.g.,* NABL Letter; Squire Sanders & Dempsey Letter; Sherman & Howard Letter.

[816] *See, e.g.,* State of Indiana Letter; Squire Sanders & Dempsey Letter; NABL Letter.

[817] *See* Squire Sanders & Dempsey Letter.

[818] Rule 15Ba1–1(d)(2)(iv). In addition to the modifications discussed above, the Commission is adopting the attorney exclusion with minor, non-substantive modifications to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions.

[819] *See supra* notes 803–807 and accompanying text.

[820] *See supra* notes 809–813 and accompanying text (discussing comments on the role of bond counsel in a municipal securities transaction and the expectation that attorneys share their advice with the financing team).

[821] *See supra* notes 809 and 814 and accompanying text (discussing comments on potentially conflicting duties if an attorney is not counsel to the municipal entity or obligated person, but would be required to register as a municipal advisor to the extent they provide advice on the transaction).

[822] *See supra* note 813 and accompanying text (discussing role of underwriter's counsel in a municipal securities transaction).

If, however, in connection with the issuance of municipal securities or municipal financial products, an attorney represents himself or herself as a ''financial advisor'' or ''financial expert,'' the attorney will be required to register as a municipal advisor if the attorney engages in municipal advisory activities. As provided in the Proposal, the Commission would consider an attorney to be representing himself or herself as a ''financial advisor'' or ''financial expert'' if the attorney provides advice that is primarily financial in nature, such as: (1) The financial feasibility of a project or financing; (2) advice estimating or comparing the relative cost to maturity of an issuance of municipal securities depending on various interest rate assumptions; (3) advice recommending a particular structure as being financially advantageous under prevailing market conditions; (4) advice regarding the financial aspects of pursuing a competitive sale versus a negotiated sale; and (5) other types of financial advice that are not related to the attorney's provision of legal advice and services of a traditional legal nature.[823] In these examples, attorneys would be providing services that are primarily financial in nature and that are beyond their traditional legal roles and outside of the statutory exclusion. The Commission believes that if an attorney represents himself or herself as a financial advisor or expert and engages in municipal advisory activities, the attorney is acting outside the scope of the statutory exclusion (*i.e.,* the attorney is not offering legal advice or providing services that are of a traditional legal nature).[824]

The Commission recognizes that analysis, discussion, negotiation, and advice regarding the legal ramifications of the structure, timing, terms, and other provisions of a financial transaction by an attorney to a client are essential to the development of a plan of finance. In turn, these services become, among other things, the basis for a transaction's basic legal documents, the preparation and delivery of the official statement or other disclosure document that describes the material terms and provisions of the transaction, the preparation of the various closing certificates that embody the terms and provisions of the transaction, the preparation and delivery of the attorney's legal opinion with respect to the transaction that is relied upon by the client and investors in the municipal securities marketplace, and advice and documentation with respect to post-closing policies and procedures that are necessary for compliance with federal and state law during the term of the municipal securities or municipal financial product. Similarly, attorneys often provide legal advice and related legal services regarding Federal tax requirements for issues of municipal securities, such as, for example, legal advice and services in determining ongoing compliance of an issue of municipal securities with the Federal tax law requirement to ''rebate'' excess arbitrage earnings on investments of tax-exempt bond proceeds to the Federal Government at periodic intervals during the term of the bond issue. The legal advice and legal services described in this paragraph would be within the attorney exclusion to the municipal advisor definition. Thus, attorneys providing this advice or these services would not be required to register as municipal advisors.

In addition, the Commission recognizes that attorneys seeking to represent municipal entities and obligated persons are often required to respond to RFPs and RFQs, and to participate in interviews during which they are requested to, and do, offer advice regarding the structure, timing, terms, and other provisions of a proposed offering of municipal securities or municipal financial products before being retained as counsel and that these requests may not be limited to legal questions. As discussed above in Section III.A.1.c.ii, the Commission does not believe that a response to an RFP or RFQ is advice with respect to the issuance of municipal securities or municipal financial products, and the Commission is adopting an exemption from the definition of municipal advisor for any person providing a response to an RFP or RFQ, provided such person does not receive separate direct or indirect compensation for advice provided as part of such RFP or RFQ. The Commission notes that responses to RFPs and RFQs are provided at the request of the municipal entity or obligated person. Thus, anyone responding to an RFP or RFQ in accordance with the exemption, including an attorney, will not have to register as a municipal advisor.

The Commission also recognizes that attorneys who represent municipal entities or obligated persons with respect to the issuance of municipal securities or municipal financial products are often asked to provide interpretation of the provisions of the legal documents throughout the term of the municipal securities or municipal financial products, including before and after the formal attorney-client relationship with respect to the issuance or municipal financial product exists.[825] Although the attorney-client relationship may not be in existence, if the advice is with respect to an issuance or transaction in connection with which the municipal entity was or will be a client of the attorney, the Commission considers such advice to be ''to a client.'' Accordingly, such advice will not require the attorney to register as a municipal advisor.

Finally, as discussed above, the Commission is clarifying that provision of general information, including the provision of educational materials to an attorney's clients and non-clients does not constitute advice, and therefore, will not require the attorney to register as a municipal advisor.[826]

Engineers Providing Engineering Advice

Section 15B(e)(4)(C) of the Exchange Act excludes engineers providing engineering advice from the municipal advisor definition. In the Proposal, the Commission proposed to interpret this exclusion to mean that the term ''municipal advisor'' shall not include ''[a]ny engineer, unless the engineer engages in municipal advisory activities other than providing engineering advice.'' [827] In the Proposal, the Commission stated that costing out engineering alternatives would not subject an engineer to registration because such activity would be considered ''engineering advice.'' [828] The Commission, however, further proposed that this exclusion would not include circumstances in which the engineer is engaging in municipal advisory activities, including cash flow modeling or the provision of information and educational materials relating to municipal financial products or the issuance of municipal securities, even if those activities are incidental to the provision of engineering advice.[829] The Commission also proposed that the exclusion would not include preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that provide analysis beyond the engineering aspects of the project. Therefore, under the Proposal, engineers engaging in the types of activities described above

[823] *See* Proposal, 76 FR 834.

[824] *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[825] *See supra* notes 816–817 and accompanying text.

[826] *See supra* Section III.A.1.b.i. (discussing the provision of general information) and note 815 and accompanying text.

[827] *See* proposed Rule 15Ba1–1(d)(2)(v).

[828] *See* Proposal, 76 FR 834.

[829] *See id.*

would have been required to register as a municipal advisor.[830]

The Commission requested comment on whether it should expand its proposed interpretation of the statutory exclusion beyond engineers providing engineering advice.[831] The Commission also asked how the term ''engineering advice'' should be interpreted and whether the engineering exclusion should 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.[832]

The Commission received approximately 32 comment letters regarding the proposed interpretation of the statutory engineering exclusion. Some commenters supported the proposed interpretation of the exclusion.[833] One commenter stated that the Commission ignored the statutory exclusion altogether.[834] Most commenters, however, suggested that the Commission's proposed interpretation of the engineering exclusion was too narrow and that activities such as cash flow analyses and feasibility studies represent an integral part of an engineer's services.[835] Some commenters suggested that the terms ''cash flow analysis'' and ''feasibility studies'' have very specific meanings within the engineering industry.[836] One commenter specifically recommended that engineering firms reporting on the condition of water and sewer systems should be excluded from the definition of municipal advisor.[837] Another commenter noted that the Brooks Act,[838] which was enacted in 1972, delineates what constitutes ''engineering services.'' [839]

A number of commenters highlighted energy services and solar energy companies, in particular, as a sector of the engineering industry that would be especially affected by the Commission's proposed interpretation.[840] Three commenters suggested that energy service companies should be able to provide disclosure statements to municipalities without being considered municipal advisors,[841] and one commenter suggested that solar energy companies acting in an engineering role and providing just information and education related to cost savings integral to solar engineering should be included in the exemption.[842]

The Commission has carefully considered the issues raised by commenters on the Proposal and is adopting its interpretation of the statutory engineering exclusion, substantially as proposed, to provide that engineers are excluded from the definition of municipal advisor ''to the extent that the engineer is providing engineering advice,'' [843] with modifications and clarifications regarding the scope of its interpretation of the statutory exclusion in response to public comment.[844] In general, the Commission believes activities within the scope of the engineering exclusion may include feasibility studies, cash flow analyses, and similar activities; provided, however, that the engineering exclusion does not cover activities in which an engineer provides advice to a municipal entity or obligated person regarding municipal financial products or the issuance of municipal securities, as discussed further herein.

Activities within the scope of the engineering exclusion include, among other things, certain activities discussed below. The Commission believes that this exclusion covers an engineer's provision of certain information to its client regarding a project schedule and anticipated funding requirements of the project. The Commission further

[830] *See id.*

[831] *See id.,* at 837.

[832] *See id.*

[833] *See* MSRB Letter (''The MSRB supports the language of proposed Rule 15Ba1–1(d)(2)(v) regarding the exclusion for engineers, including in particular that such exclusion applies solely when an engineer is providing engineering advice. Thus, to the extent that an engineer provides advice with respect to municipal financial products, the issuance of municipal securities or other financing structure that is not considered engineering advice (such as advice on how to structure an issue to cover the costs of a project), the engineer would be considered a municipal advisor.'') and Acacia Financial Group Letter.

[834] *See* letter from Spencer Bachus, Chairman, United States House of Representatives, Committee on Financial Services, dated February 23, 2011 (''Bachus Letter'').

[835] *See, e.g.,* letters from David King, President, Virginia/DC/Maryland Chapter, American Public Works Association, dated February 16, 2011 (''APWA Letter'') (stating that engineering professional services for infrastructure evaluations, studies, and design contracts by their very nature involve and require cost analyses); David A. Raymond, President & CEO, American Council of Engineering Companies, dated February 18, 2011 (''ACEC Letter'') (stating that in many cases, analysis of cash flow requirements is inextricable from the design of an engineering project, and that engineers often provide guidance regarding alternative phasing of projects to match available revenues or to maximize the infrastructure given limited resources); Parsons Brinckerhoff Inc., dated February 18, 2011 (''Parsons Brinckerhoff Letter'') (noting that in the engineering context, cash-flow modeling often involves (1) a cost-loaded design and construction schedule, or (2) a record-keeping cash flow analysis that facilitates periodic reporting); Kutak Rock Letter (stating that the Commission should treat an engineer's preparation of a project feasibility study as a part of routine engineering advice); Honeywell Letter (stating that ''the provision of such [feasibility studies and other activities that currently do not fall under the engineer exemption] is simply necessary for the municipality to initially understand the costs associated with a proposed engineering project and the range of potential options for financing such project, not to assist it in specifically evaluating or recommending financing options''); NAESCO Letter (stating that ''engineering includes a continuum of services . . . including the provision of general and specific information about financing options for energy projects, preparation of studies including information about cash-flows and other financial projections, and identification of, and introduction to brokers, dealers, municipal advisors (including financial advisors) and municipal securities dealers with expertise in financing energy service projects''); letter from David A. Raymond, President & CEO, HNTB Holdings Ltd, dated February 22, 2011 (''HNTB Holdings Letter'') (stating that ''[t]he conception of engineering advice expressed in the proposing release does not reflect engineering as it is practiced today, particularly in the context of infrastructure projects, and excludes many activities that are intrinsic to the profession of engineering'').

[836] *See, e.g.,* Parsons Brinkerhoff Letter.

[837] *See* letter from Mark Page, Director of Management and Budget, The City of New York, dated February 22, 2011 (''NYC Management and Budget Letter''). This commenter also stated that sewer rate consultants issuing reports relating to the sufficiency of water and sewer rates to satisfy obligations of a city's water authority are not providing advice relating to municipal securities or municipal financial products; and that rate consultants providing advice regarding rates and revenues should, like engineers providing engineering advice, be excluded from the definition of ''municipal advisor.''

[838] 40 U.S.C. 1102. The Brooks Act is a federal law that sets forth policies and certain procedures for selection by the federal government of engineering and architecture firms and related services.

[839] *See* letter from Mark A. Casso, President, Construction Industry Round Table, dated February 22, 2011 (''Construction Industry Round Table Letter'').

[840] *See, e.g.,* letters from Senator Daniel Coats, Congressmen Dan Burton, Larry Bucshon, Todd Rokita, and Todd Young, dated May 27, 2011 (''Senator Coats et al. Letter'') (highlighting the ''unnecessarily dire impacts'' that the proposed rule would have on energy services companies); Senator Landrieu, Senator Coons, and Chairman Bingaman, United States Senate Committee on Energy and Natural Resources, dated June 22, 2011 (''Senator Landrieu et al. Letter'') (stating that ''the Commission's proposal undermines [the engineering] exemption by suggesting that any [energy services company] that so much as provides a cash flow analysis or feasibility study to a municipality would not be providing 'engineering advice' and would therefore be subject to registration as a 'municipal advisor'''); Honeywell Letter; letter from Katherine Gensler, Director, Regulatory Affairs, and Emily J. Duncan, Policy Specialist, Solar Energy Industries Association, dated November 9, 2011 (''Solar Energy Industries Association Letter'').

[841] *See* NAESCO Letter; Honeywell Letter; Chevron Letter.

[842] *See* Solar Energy Industries Association Letter. For purposes of the engineering exclusion discussion, the Commission treats energy services and solar energy companies as engineering companies.

[843] *See* Rule 15Ba1–1(d)(2)(v). The Commission is adopting the engineering exclusion with minor, non-substantive modifications from the version proposed to provide greater clarity and consistency with other organizational changes the Commission is making to the exclusions and exemptions.

[844] *See supra* notes 835–836 and accompanying text (discussing comments related to cash flow analyses and feasibility studies).

believes that the provision of engineering feasibility studies that include certain types of projections, such as projections of output capacity, utility project rates, project market demand, or project revenues that are based on considerations involving engineering aspects of a project are within the scope of the engineering exception.

For example,[845] an engineer who provides funding schedules and cash flow models that anticipate the need for funding at certain junctures in a project or engineering feasibility studies based on analysis of engineering aspects of the project will fall within the Commission's interpretation of the statutory engineering exclusion from the municipal advisor definition. An engineering feasibility study, for example, might include a discussion of how much power might be generated by the installation of solar panels, and such a discussion would not constitute a municipal advisory activity. Similarly, recommendations about how to increase power output based on factors such as the placement of the panels or the number of panels would also not constitute a municipal advisory activity. Moreover, an engineer might provide estimates of water delivery capacity or a road's traffic capacity without engaging in municipal advisory activity. Engineers who report on the physical condition of infrastructure, such as roads, bridges or water and sewer systems, would also not be engaged in municipal advisor activity.[846] Absent other facts and circumstances which indicate that an engineer is providing advice to a municipal entity or obligated person regarding the issuance of municipal securities, an engineer's use of assumptions provided by a municipal entity or obligated person regarding interest rates or debt levels in preparing an engineering feasibility study or cash flow analysis alone will not result in municipal advisory activity.

With respect to services related to cash flow analysis, a municipal entity might seek input from an engineering company about whether a project could be accomplished with estimated available funding, including the timing of such funding. As noted above, engineers that provide input about the anticipated funding requirements of a project would not be engaging in a municipal advisory activity.[847] Thus, an engineer could advise a municipal entity about whether a project could be safely or reliably completed with the available funds and provide engineering advice about other alternative projects, cost estimates, or funding schedules without engaging in municipal advisory activity. Further, the Commission would consider an engineering company that informs a municipal entity or obligated person of potential tax savings, discounts, or rebates on supplies to be acting within the scope of the engineering exclusion.

By contrast, however, activities of engineers are outside the scope of the engineering exclusion if they include advice to a municipal entity or obligated person regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances. For example, an engineer that is engaged by a municipal entity or obligated person to prepare revenue projections to support the structure of an issuance of municipal securities would be providing advice outside the scope of the engineering exclusion and would be engaging in municipal advisory activity. Further, while the inclusion of an engineering feasibility study in an official statement or other offering document for an issuance of municipal securities alone does not cause an engineer's activities with respect to the feasibility study to be treated as municipal advisory activity, other facts and circumstances, such as the inclusion of revenue projections and debt service coverage calculations in the feasibility study, may suggest municipal advisory activity.

Engineering companies may also provide advice to their clients regarding financing of products and services delivered to such clients. As noted previously, the Commission is clarifying that provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities (including general information with respect to financing options) would not be municipal advisory activity.[848] Depending on all the facts and circumstances, however, the provision of information describing financing alternatives that may meet the needs of a municipal entity or obligated person may be considered a recommendation with respect to municipal financial products or the issuance of municipal securities that would be municipal advisory activity.[849]

One commenter stated that another standard service offered by engineers involves the provision of introductions of municipal entities to brokers, dealers, municipal advisors, and municipal securities dealers and that such introductions should be within the engineering exclusion.[850] One commenter recommended that the Commission ''refine its approach'' to register only those solicitors that receive compensation for introductions to funding sources.[851]

The Commission does not believe it is necessary or appropriate to provide a separate exemption for engineers engaging in introductions. The Commission notes that introductions provided by engineers would be subject to the same analysis as any other ''solicitation of a municipal entity or obligated person.'' [852] Thus, if an introduction does not result in direct or indirect compensation to the engineer, the introduction will not constitute such a solicitation and the engineer will not be required to register as a municipal advisor.

Finally, as discussed previously, the Commission is providing an exemption for advice given to municipal entities and obligated persons in circumstances in which the municipal entity or obligated person separately is represented by an independent registered municipal advisor.[853]

[845] *See, e.g., supra* note 835 and accompanying text.

[846] *See supra* note 837. Whether a rate consultant providing advice regarding rates and revenues would be a ''municipal advisor'' will depend upon the facts and circumstances. For example, if such consultant provides advice on whether certain rates and revenues would support debt service on an issue of municipal securities, such activity would be municipal advisory activity that would subject the consultant to the registration requirement. Although the Commission is not adopting an exemption for persons performing such activities, the Commission notes that like all persons, such entities could apply for no-action or exemptive relief. As noted above, when requesting exemptive relief pursuant to Section 15B(a)(4), a person may follow the procedures for requesting exemptive relief pursuant to Section 36 of the Exchange Act, as set forth in Rule 0–12 under the Exchange Act. *See* 17 CFR 240.0–12.

[847] In the Proposal, the Commission gave as an example of activity that would be engineering advice the costing out of engineering alternatives. *See* Proposal, 76 FR 834.

[848] *See supra* note 168 and accompanying text. *See also supra* Section III.A.1.b.i. (providing guidance on the term ''advice'' and discussing the provision of general information).

[849] *See supra* Section III.A.1.b.i. (providing guidance on the term ''advice'' and discussing the provision of general information).

[850] *See* NAESCO Letter.

[851] *See* letter from Jennifer Schafer, Coordinator, Federal Performance Contracting Coalition, dated February 22, 2011 (''Federal Performance Contracting Coalition Letter'').

[852] *See supra* Section III.A.1.b.x. (discussing ''solicitation of a municipal entity or obligated person'').

[853] *See supra* Section III.A.1.c.iii. (discussing the exemption when a ''municipal entity or obligated person represented by an independent municipal advisor'').

Engineers may provide advice beyond engineering advice when such an independent registered municipal advisor is present without triggering the requirement to register as a municipal advisor.

Vendors Generally

Some commenters who commented on other aspects of the Proposal also provided information with respect to purchases from vendors made by municipal entities that could potentially involve the issuance of municipal securities. One commenter stated that most municipalities, for example, do not purchase a solar installation upfront, but rather enter into a purchase or lease agreement with the solar company.[854] Another commenter referenced lease-leaseback arrangements and preferred provider or performance contract arrangements.[855]

The Commission notes that municipal entities and obligated persons purchase a wide range of products from vendors, including, for example, computers, office furnishings and supplies, car, truck and school bus fleets, telephone systems, and a multitude of other products. The Commission believes that the activities of vendors in advertising, promoting, and selling their products to municipal entities are generally outside the scope of municipal advisory activities because these activities generally do not involve advice with respect to the issuance of municipal securities or municipal financial products.[856]

The Commission understands, however, that sometimes municipal entities and obligated persons may finance the purchase of products from vendors through the use of instruments such as installment purchase contracts, installment sale contracts, lease-purchase agreements, or loans. The Commission notes that the provision of advice and recommendations by vendors (or any other person including, for example, lease financing companies affiliated with vendors) to municipal entity or obligated person clients regarding specific financing options for the purchase of products could, depending on the facts and circumstances, be a municipal advisory activity. For example, certain financings, depending on how they are structured, could constitute the issuance of a security[857] by a municipal entity and, therefore, could constitute the issuance of a municipal security.[858] The provision of advice and recommendations regarding such an issuance would constitute municipal advisory activity unless an exclusion or exemption applies.

Actuaries

Section 15B(e)(4)(C) of the Exchange Act does not include an exclusion for actuaries from the municipal advisor definition. The Commission received approximately five comment letters concerning a possible exemption for actuaries.[859]

One commenter stated that if the term ''investment strategies'' extends beyond proceeds of municipal securities to include funds held in pension plans, actuarial services for pension plans would potentially require municipal advisor registration.[860] The same commenter recommended that the Commission exempt from the municipal advisor definition enrolled actuaries and members of the five U.S.-based actuarial organizations that have adopted the actuarial Code of Professional Conduct (including the American Academy of Actuaries, the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries).[861] This commenter suggested that such exemption should apply to actuaries providing actuarial services that are governed by the Actuarial Standards of Practice and the Code of Professional Conduct.[862] Further, another commenter recommended that actuaries providing actuarial services to public pension plans, 403(b) plans, and 457(b) plans generally should also be exempt.[863] Additionally, one commenter recommended that the Commission clarify whether actuaries who perform actuarial and/or consulting services for certain other governmental benefit plans and trusts, such as retiree medical plans, voluntary employee benefit associations and related trusts (''VEBAs''), and other post-employment benefits (''OPEB'') plans and trusts would be municipal advisors.[864] Finally, another commenter stated that actuarial studies should not be considered to be ''municipal advisory activities.''[865]

For the reasons discussed below, the Commission does not believe that it is necessary or appropriate to exempt actuaries from the municipal advisor registration regime as suggested by commenters. However, as discussed in other sections of the release, the Commission is making several changes to the final rule text and its interpretations that would also address some of the concerns raised by commenters. As discussed above in Section III.A.1.b.viii, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments. Thus, persons who provide advice with respect to a plan, such as a public employee benefit plan (including 403(b) plans and 457(b) plans, to the extent the plans do not contain proceeds of municipal securities) will not be required to register as municipal advisors. To the extent that a plan contains proceeds of municipal securities, the Commission understands that an actuary's service does not generally involve advice with respect to the investment of such proceeds. As such, an actuary's services with respect to such plan generally would not constitute municipal advisory activities and would not require the actuary to register as a municipal advisor.

In addition, the provision of actuarial studies that are used as the basis for a municipal entity to engage in a financing will not be considered a municipal advisory activity if the actuarial study only uses client-provided investment return assumptions and does not make any recommendations about how such municipal entity might address an unfunded liability, including a discussion of the advisability of an issuance of municipal securities or a municipal financial product. Further, in order for the provision of actuarial studies that form the basis for disclosure with respect to an issuance of municipal securities to not constitute a municipal advisory activity, it must not include a discussion of the advisability of an issuance of municipal securities or a municipal financial product. Such

[854] *See* Solar Energy Industries Association Letter.

[855] *See* NAESCO Letter.

[856] *See supra* note 143 and accompanying text (discussing the term ''municipal advisory activities'').

[857] *See* Reves v. Ernst & Young, Inc., 494 U.S. 56 (1990), where the U.S. Supreme Court established a multi-factor test to distinguish securities from instruments that are not securities.

[858] *See* 15 U.S.C. 78c(a)(29) (defining ''municipal securities'').

[859] *See, e.g.,* Fraser Stryker Letter; State of Indiana Letter; letter from Maria Sarli, Resource Actuary, and Lynn Cook, Towers Watson, dated February 22, 2011 (''Towers Watson Letter''); American Society of Pension Professionals Letter; and American Academy of Actuaries Letter.

[860] *See* American Academy of Actuaries Letter.

[861] *See id.*

[862] *See id.*

[863] *See* Towers Watson Letter.

[864] *See* Fraser Stryker Letter.

[865] *See* State of Indiana Letter.

actuarial studies only provide calculations using data from the client and do not involve the provision of any advice. An actuary may be deemed to be engaged in a municipal advisory activity if the facts and circumstances indicate that the actuary tailored its actuarial study to support an issuance of municipal securities or to support entering into a municipal financial product.

viii. Banks

In the Proposal, the Commission discussed a commenter's suggestion that the Commission exempt from the definition of ''municipal advisor'' banks providing ''traditional banking services'' and banks and trust companies that provide ''investment advisory services.''[866] The Commission noted that Congress included in the statutory definition of municipal advisor a limited number of exclusions, and such exclusions did not include banks in any capacity.[867] In addition, as discussed more fully above,[868] the Commission proposed to interpret the term ''investment strategies'' to include ''plans, programs, or pools of assets that invest in funds held by or on behalf of a municipal entity.'' [869] In connection with its proposed interpretation of ''investment strategies,'' the Commission stated that, because every bank account of a municipal entity is comprised of funds ''held by or on behalf of a municipal entity,'' money managers that provide advice to municipal entities regarding their bank accounts could be municipal advisors.[870]

The Commission requested comment on whether it should exempt 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 [871]) at an ''insured depository institution'' (as defined in Section 3(c)(2) of the Federal Deposit Insurance Act [872]). The Commission stated that, if adopted, banks would be exempted from the definition of municipal advisor to the extent they provide advice to a municipal entity or obligated person with respect to such banking products as insured checking and savings accounts and certificates of deposit. However, banks would not be exempted if they engage in other municipal advisory activities.[873]

In response to request for comment, the Commission received over 300 letters from commenters, many of them commercial banks and banking associations. The commenters stated that, because the Commission was proposing to interpret the term ''investment strategies'' to encompass any funds ''held'' by a municipal entity, regardless of whether such funds are related to the issuance of municipal securities or investment of bond proceeds, the definition would potentially cover what commenters termed ''traditional banking products and services.'' [874] According to the commenters, such services include deposit accounts, cash management products, and loans to municipalities, all of which are already subject to supervision by federal bank regulators.[875] As a result, these commenters stated that banks providing such products and services would have to register as municipal advisors, adding ''a new layer of regulation on bank products for no meaningful public purpose.'' [876] One commenter noted that ''the OCC and the other federal banking agencies have an existing regulatory framework and oversight over traditional banking products and services, which include bank deposit transactions * * * The OCC also already evaluates the ability of bank management to monitor and control traditional banking products and services, including the administration of deposit accounts, through regular and extensive on-site examinations.'' [877] Other commenters recommended that municipal advisor registration should

[866] *See* letter from Carolyn Walsh, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, and Deputy General Counsel, ABA Securities Association, dated October 13, 2010. *See also* Proposal, 76 FR 834, notes 143–144 and accompanying text. As support, this commenter stated that banks are currently well-regulated and banks that offer trustee services are subject to rigorous and frequent examination, as well as extensive regulation by the various federal or state banking regulators.

The commenter also listed the following activities as examples of the types of activities in which bank and trust companies engage: providing direct loans, checking accounts, and CDs; responding to RFPs regarding investment products offered by the bank, such as interest bearing deposits, money market mutual funds, or other exempt securities; investing in securities issued by municipalities and providing credit, or through their affiliates, underwriting services to municipalities (such as when the municipality wants to buy a fire truck or build a school); providing fiduciary services to municipal entities (such as by managing investment accounts for local towns or acting as trustee with respect to bond proceeds, escrow accounts, governmental pension plans and other similar capacities). *See* Proposal, 76 FR 834, n.143.

[867] *See id.,* at 835.

[868] *See supra* Section III.A.1.b.viii.

[869] *See* Proposal, 76 FR 830.

[870] *See id.*

[871] 12 U.S.C. 1813(*l*).

[872] 12 U.S.C. 1813(c)(2). *See* Proposal, 76 FR 835.

The Commission also requested on comment on whether to exclude banks performing certain other specific activities, including, for example: banks responding to RFPs from municipal entities regarding other investment products offered by the banking entity, such as money market mutual funds or other exempt securities; banks that provide 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 negotiate the terms of an investment with the municipal entity; banks that provide 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 anticipation notes, tax anticipation notes, or revenue anticipation notes; banks that direct or execute 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; 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; and banks and trust companies 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. *See* Proposal, 76 FR 837.

[873] *See id.,* at 835.

[874] *See, e.g.,* American Bankers Association Letter I (the SEC's proposed interpretation would regulate ''already-regulated traditional banking products, such as deposit, cash management and lending activities, and trust or custody products with or on behalf of municipalities''); Union Bank Letter; Form Letter A (of the approximately 300 comment letters that addressed the topic of commercial bank regulation, 170 were submitted in Form Letter A format) (the SEC's proposed interpretation would cover ''traditional bank products and services, such as deposit accounts, cash management products, and loans to municipalities''). *See also* Form Letter D (36 comment letters were submitted in this form) (the SEC's proposed interpretation ''would label as ''municipal advisors'' banks and many bank employees providing essential and traditional bank services to their local municipalities, including day-to-day deposit, cash management, custody, trustee, and lending services—a result we do not believe furthers any legitimate policy goal . . .'').

[875] *See, e.g.,* American Bankers Association Letter I; Union Bank Letter; Form Letter A.

[876] *See, e.g.,* Form Letter A. *See also* Form Letter D (36 comment letters were submitted in this format) (stating that ''the rule would result in . . . additional, redundant layers of multiple rules by the SEC and Municipal Securities Rulemaking Board (MSRB) for the very same products and services for which we are already comprehensively supervised by the prudential banking regulators''); BOK Financial Corp. Letter (stating that ''[e]xpanding the . . . registration requirement to providers of traditional banking services is unnecessary because it provides no additional protection to municipalities or investors in municipal securities beyond existing regulation and oversight''); American Bankers Association Letter I (stating that ''[d]eposit accounts, cash management products, loans, and trust and custody products are but four broad types of [municipal financial products]'' and that ''[a]ll are extensively regulated, and the institutions providing them are supervised and regularly examined by the federal bank regulators'').

[877] *See* OCC Letter.

instead only apply to currently unregulated entities.[878]

Many commenters focused, in particular, on the potential effects of the proposed rules on ''community banks.'' [879] Many other commenters claimed that the additional regulatory burden of registering as a municipal advisor would raise costs, which would either discourage community banks from offering their full array of products and services to municipalities [880] or lead community banks to pass on added costs and expenses to their municipal entity customers.[881]

Commenters stated that ''traditional banking products and services'' are not the intended focus of the municipal advisor registration provision of the Dodd-Frank Act and that banks that provide these services should not be subject to this provision.[882] For example, one commenter noted that products such as deposit accounts and cash management products do not warrant municipal advisor registration, because ''[t]hese types of products merely are extension [sic] of more traditional deposit products, such as savings accounts, checking accounts and CDs, and do not constitute 'advice' under any reasonably accepted definition of the term.'' [883]

Other commenters listed specific banking products and services that, in their view, should not be encompassed within municipal advisor registration. For example, one commenter stated that, ''[a]t a minimum, the Commission should clarify that banks providing municipal entity customers advice regarding traditional banking products including deposit accounts, savings accounts, certificates of deposit, bankers acceptances, bank loans and letters of credit, and certain loan participations do not need to register as municipal advisors.'' [884] This commenter also stated that the Commission should clarify that ''banks providing the terms for the purchase of municipal securities for the bank's own account shall be excluded from registration as 'municipal advisors''' and explained that ''banks are authorized to purchase municipal securities for their own account subject to extensive regulation and oversight.'' [885] Another commenter also argued that banks extending credit, ''whether through loans, letters of credit or otherwise,'' should be excluded from the definition of municipal advisor.[886]

Meanwhile, another commenter recommended that the Commission adopt an exclusion for providing advice concerning (or soliciting) transactions that involve a ''deposit'' at an ''insured depository institution,'' as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, including advice with respect to: (1) Insured checking and savings accounts and certificates of deposit; (2) directing or executing purchases and sales of securities or other instruments in a trust, fiduciary, or investment management account in accordance with predetermined investment criteria or guidelines, including on a discretionary basis; (3) providing other services to municipal entities, such as acting as trustees with respect to governmental pension plans and other similar capacities; (4) providing advice concerning (or soliciting) transactions that are subject to an exemption under Regulation R under the Exchange Act, or transactions otherwise excluded from the definition of broker-dealer activities under the Exchange Act, including bank broker-dealer exceptions relating to third-party networking arrangements, trust and fiduciary activities, deposit ''sweep'' activities, custody and safekeeping activities and certain securities lending transactions; (5) and serving as trustee to a pooled investment vehicle.[887] Another commenter recommended that the municipal advisor definition only cover the services of advisors with respect to the investment of proceeds of municipal securities and exclude the deposit and cash management services traditionally provided by ''community banks.'' [888] Another commenter suggested that ''investment strategies'' not include products and services in the categories of deposit accounts insured by the FDIC (up to $250,000) or bank activities that the Commission has exempted from the definitions of ''broker'' under Section 3(a)(4)(B) of the Exchange Act.[889]

The Commission is exempting from the definition of municipal advisor persons that provide advice with respect to ''investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.'' [890] Accordingly, the performance of many of the bank activities and services about which commenters were concerned would not require banks to register as municipal advisors. In addition, as discussed further below, the Commission is exempting from registration banks that perform certain activities.

Specifically, the Commission is exempting from the definition of municipal advisor ''[a]ny bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), to the extent the bank provides advice with respect to the following: (A) [a]ny investments that are held in a deposit account, savings account, certificate of deposit, or other

[878] *See, e.g.,* SIFMA Letter I; American Bankers Association Letter I (stating that ''as drafted, the proposal goes far beyond legislative intent or public policy need by purporting to regulate already-regulated traditional banking products, such as deposit, cash management and lending activities, and trust and custody products with or on behalf of municipalities''); Union Bank Letter (stating that Congress intended to regulate a heretofore unregulated group that advises municipal entities, and not banks that are already regulated).

[879] Entities referring to themselves as ''community banks'' include, for example First Bank of Owasso; ACB Bank, Cherokee; First National Bank of Bastrop, Texas; and The First National Bank of Suffield. *See* letter from Dominic Sokolosky, President, First Bank of Owasso, dated February 14, 2011; letter from Kari Roberts, President/CCO, ACB Bank, Cherokee, dated February 15, 2011; letter from Reid Sharp, President/CEO, First National Bank of Bastrop, Texas, Bastrop, Texas, dated February 16, 2011; letter from George W. Hermann, President/CEO, The First National Bank of Suffield, dated February 17, 2011.

The OCC defines ''community banks'' generally as ''banks with less than $1 billion in total assets and may include limited-purpose chartered institutions, such as trust banks and community development banks.'' *See* Comptroller's Handbook, Community Bank Supervision (2010) available at *http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/cbs.pdf* at 1.

[880] *See, e.g.,* Form Letter A.

[881] *See, e.g.,* Hancock Holding Co. Letter. However, none of the commenters provided any data on the dollar cost that would be imposed by the proposed rules.

[882] *See, e.g.,* Form Letter A, Form Letter D, American Bankers Association Letter I, Independent Community Bankers of America Letter, and OCC Letter.

[883] *See* Independent Community Bankers of America Letter. As examples of short-term investment of cash, this commenter listed ''interest-bearing bank accounts and overnight or other periodic investment sweeps.'' *See id.*

See also letter from Charles V. Motil, Capital One Financial Corporation, dated February 22, 2011 (stating that ''a bank teller would be caught under the [municipal advisor] definition when helping an employee of the municipal entity deposit money into the entity's checking account if the teller, seeing that the account carries a high balance, recommends a savings account or certificate of deposit that would give the entity a higher rate of return'').

[884] *See* OCC Letter.

[885] *See id. See also* Independent Community Bankers of America Letter (stating that the Commission should exclude from the definition of ''municipal advisor'' banks that provide ''to a municipal entity the terms upon which the bank would purchase for [its] own account securities . . . issued by the municipal entity,'' and arguing that ''[s]uch activities do not involve the safeguarding of public funds'').

[886] *See* Independent Community Bankers of America Letter.

[887] *See* SIFMA Letter I.

[888] *See* First Bank of Owasso Letter.

[889] *See* First Tennessee Bank National Association Letter.

[890] *See* Rule 15Ba1–1(d)(3)(vii). *See also supra* Section III.A.1.b.viii.

deposit instrument issued by a bank; (B) [a]ny extension of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account; (C) [a]ny funds held in a sweep account that meets the requirements of Section 3(a)(4)(B)(v) of the Act (15 U.S.C. 78c(a)(4)(B)(v)); or (D) [a]ny investment made by a bank acting in the capacity of an indenture trustee [891] or similar capacity.'' [892] The Commission believes that advice by banks to municipal entities and obligated persons with respect to these products and services would not subject municipal entities and obligated persons to the kinds of risks that the municipal advisor registration regime is intended to mitigate.

The Commission notes that the products and services included in the exemption, such as deposit accounts and certain other short-term cash investments like sweep accounts, and extensions of credit by a bank (whether by direct loan or otherwise),[893] are transactions in which there should be no confusion as to the role of the bank or its employees. Similarly, the Commission notes that banks that purchase securities from municipal entities or obligated persons for their own account (without providing advice to the municipal entities or obligated persons with respect to other issues or municipal products) are not engaging in municipal advisory activities. Instead, they are acting as principals in purchase transactions.[894] In the case of investments made by an indenture trustee, the bank acts at the direction of the municipal entity or obligated person.

Accordingly, Rule 15Ba1–1(d)(3)(iii) provides an exemption from the definition of municipal advisor for banks that provide advice with respect to certain enumerated products and services that the Commission believes do not pose the types of risks that the Dodd-Frank Act was designed to address. Moreover, the Commission notes that the narrower focus of the ''investment strategies'' definition on investments of proceeds of municipal securities and municipal escrow investments discussed above is intended to be responsive to comments about the impact of the municipal advisor registration requirement on the provision of products and services offered by banks. The Commission believes that, together, these exemptions to the definition of ''municipal advisor'' generally will cover banks with respect to advice that they provide regarding the types of products and services that commenters referred to as ''traditional banking products and services.'' [895] For example, commenters identified deposit accounts, which municipal entities typically use for short-term investments of revenues, as one type of traditional banking product. Under the final rules, banks that provide advice regarding deposit accounts generally will be explicitly exempt from the definition of municipal advisor for this type of account. Similarly, banks will be explicitly exempt with respect to other identified products and services such as letters of credit and sweep accounts. Additionally, although the final rules would not explicitly exempt certain products and services such as custody accounts and trust services (unless the bank is serving in the capacity of an indenture trustee or a similar capacity), a bank providing advice with respect to such products or services would not be required to register as a municipal advisor, as a result of the narrower approach with respect to investment strategies, unless such accounts contain proceeds of municipal securities or municipal escrow investments.

By contrast, however, the Commission is not exempting from registration banks that engage in municipal advisory activities, including without limitation banks that provide advice to municipal entities or obligated persons with respect to the issuance of municipal securities, or banks that provide advice with respect to municipal derivatives, unless the bank qualifies for another exclusion or exemption, such as under the limited circumstances described above with respect to the exemption for certain swap dealers.[896] As discussed above in the context of the definition of municipal derivatives and the exemption for certain swap dealers, with the Dodd-Frank Act, Congress established heightened protection with respect to swaps and security-based swaps,[897] and the Commission therefore does not believe that a blanket exemption for banks with respect to such activities would be appropriate. The Commission believes it is important to emphasize that the bank exemption does not apply to advice on municipal derivatives, which is a significant problem area identified in the financial crisis in which municipal entities suffered significant losses,[898] and further, the bank exemption does not apply to advice on the issuance of municipal securities, which is a core focus of the protections to municipal entities in the municipal advisor registration provision and is an area in which a blanket exemption to banks would result in a potential inappropriate competitive advantage to banks over other financial advisors.[899]

The Commission believes that the exemption it is providing for banks will help ensure that parties engaging in key municipal advisory activities are registered, while permitting banks to continue to provide products and services to municipal entities and obligated persons that do not pose the types of risks that the Dodd-Frank Act was designed to address. Therefore, for these reasons and the reasons described above, the Commission finds that it is consistent with the public interest, the protection of investors, and the purposes of Section 15B of the Exchange Act, to use its authority pursuant to Exchange Act Section 15B(a)(4) to exempt banks engaging in certain municipal advisory activities from the definition of municipal advisor pursuant to the limitations described above. Accordingly, such banks are not required to register as municipal advisors.

[891] For purposes of this rule, an indenture trustee acts as an order-taker at the direction of the municipal entity that issued the municipal securities, within the investment parameters set forth in the indenture, ordinance, resolution, or similar instrument, and, therefore, acts in a constrained capacity, because the indenture trustee is responsible for making sure that any investments it undertakes fall within the investment parameters of the indenture.

[892] Rule 15Ba1–1(d)(3)(iii).

[893] The Commission notes that the examples of extensions of credit set forth in Rule 15Ba1–1(d)(3)(iii) are not intended to be exhaustive, and that the exemption would also apply to banks providing advice to a municipal entity or obligated person with respect to other extensions of credit by a bank such as a banker's acceptance or a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns.

[894] Specifically, banks providing municipal entities or obligated persons with the terms under which they would purchase securities for their own account are not engaging in municipal advisory activities.

The Commission notes that, in this context, such banks may, however, depending on the facts and circumstances, be subject to regulation as ''municipal securities dealers.'' *See* Sections 3(a)(30) and 15B of the Exchange Act and the rules and regulations thereunder.

[895] *See, e.g., supra* notes 874 and 875, and accompanying text. *See also supra* note 884 and accompanying text (discussing the OCC Letter).

[896] *See supra* Section III.A.1.b.v. (discussing the definition of municipal derivatives) and Section III.A.1.c.vi. (discussing an exemption for certain swap dealers). *See also supra* note 275 (discussing generally the protections afforded to special entities under the Dodd-Frank Act with respect to swap and security-based swap transactions).

[897] *See id.*

[898] *See supra* note 3 and accompanying text.

[899] *See infra* Section VIII.D.6.b. (discussing alternatives to the exemptions from the definition of municipal advisor).

Separately Identifiable Departments or Divisions

Sections 3(a)(30) and 15B(b)(2)(H) of the Exchange Act provide for the MSRB to define a separately identifiable department or division of a bank (''SID'') for purposes of whether a bank is a municipal securities dealer and must register as such.[900] In the Proposal, the Commission specifically requested comment on whether the Commission should permit SIDs (providing a bank's municipal advisory activities) to register as a municipal advisor, rather than the bank itself.[901] The Commission requested comment on suggested rule text relating to SIDs, based on MSRB Rule G–1 relating to SIDs engaged in municipal securities dealer activities,[902] and asked: whether such a rule would provide appropriate conditions for determining whether and when a SID engaged in municipal advisory activities may register as a municipal advisor; whether there were reasons the language based on MSRB Rule G–1 should not be used for SIDs engaging in municipal advisory activities; and whether the language should be modified or clarified in any way, or if there was alternative language the Commission should consider.[903] The Commission notes that the concept of separate treatment for SIDs exists in the current regulatory regimes for both municipal securities dealers and investment advisers, which both permit the SID to be the regulated entity.[904]

Although as discussed above many commenters recommended that the Commission create a blanket exemption for banks,[905] some commenters specifically recommended that, to the extent a bank provides products or services that would not be excluded, the Commission should allow a bank to register a SID if its municipal advisory services or actions are performed through such a SID.[906] A few commenters[907] additionally stated that permitting registration of SIDs would be consistent with the registration scheme for municipal securities dealers[908] and investment advisers.[909]

The Commission has carefully considered issues raised by commenters on its proposal and is adopting Rule 15Ba1–1(d)(4) to permit a SID that meets the requirements of the rule to register as a municipal advisor instead of the bank. The Commission agrees with commenters that it is appropriate to treat banks performing municipal advisory activities through a SID in a manner consistent with their treatment under the investment adviser and municipal securities dealer registration regimes.[910] Thus, to the extent a bank provides advice with respect to a municipal derivative or engages in any other non-exempted municipal advisory activity, if such advice is provided through a SID that meets the requirements of Rule 15Ba1–1(d)(4), the SID, rather than the bank itself, shall be deemed to be the municipal advisor.[911] The Commission believes that permitting SIDs to register is in the public interest, because it will ensure that municipal entities and obligated persons receive the regulatory protection intended by the statute, while addressing commenters' general concerns about duplicative regulation for banks and the impact of imposing the municipal advisor registration regime on banks in general.[912]

Specifically, as adopted, Rule 15Ba1–1(d)(4) provides that ''[i]f a bank engages in municipal advisory activities through a separately identifiable department or division that meets the requirements of [Rule 15Ba1–1(d)(4)], the determination of whether those municipal advisory activities cause any person to be a municipal advisor may be made separately for such department or division. In such event, that department or division, rather than the bank itself, shall be deemed to be the municipal advisor.'' For purposes of Rule 15Ba1–1(d)(4), a SID of a bank is defined as ''that unit of the bank which conducts all of the municipal advisory activities of the bank'' provided that certain specific requirements are met. In the Proposal, the Commission suggested defining SID as such term is defined in Section 3(a)(30) of the Exchange Act. To

[900] Exchange Act Section 3(a)(30)(B) provides that the term ''municipal securities dealer'' does not include banks, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, provided, however that if the bank is engaged in such activities through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the municipal securities dealer. Exchange Act Section 15B(b)(2)(H) provides for the MSRB to ''define the term 'separately identifiable department or division', as that term is used in [Exchange Act Section 3(a)(30)], in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of [the Exchange Act], the rules and regulations thereunder and the rules of the [MSRB].''

[901] *See* Proposal, 76 FR 838.

[902] *See id.*

[903] *See* Proposal, 76 FR 838.

[904] *See supra* note 900 and *infra* note 909, respectively.

[905] *See supra* notes 874–878 and accompanying text.

[906] *See, e.g.,* Kutak Rock Letter (stating in response to the Commission's request for comment with respect to SIDs that ''a bank creating a SID should be exempted in all its other activities from registration as an advisor); SIFMA Letter 1 (encouraging the Commission to permit SIDs to register instead of the entire banking entity); Union Bank Letter (recommending that the Commission permit registration of SIDs on a voluntary basis, because given the dispersion of public finance activities throughout a bank, a bank may not be able to consolidate the activities in a single department or division as is contemplated in the analogous language for municipal dealer SIDs); ABA Letter (supporting the concept of permitting banks to register, when required to register at all, SIDs).

[907] *See* Financial Services Roundtable Letter (requesting that, if banks are required to register as municipal advisors, they should only be required to register those department actually providing municipal advisory services, consistent with the exclusion from the definition of ''municipal securities dealer'' for banks under Section 3(a)(30)(B) of the Exchange Act); First Tennessee Bank National Association Letter (stating that registration as a SID would be consistent with the registration scheme for bank municipal securities dealers and bank investment advisers to investment companies); and letter from Kurt R. Bauer, President/CEO, Wisconsin Bankers Association, dated February 21, 2011 (noting the discrepancy between the municipal advisor registration regime for municipal securities dealers that are banks, in that the Dodd-Frank Act did not provide for registration of SIDs).

[908] *See supra* note 900.

[909] *See* Section 202(a)(11)(A).

The Commission notes that the Investment Advisers Act excepts from the definition of ''investment adviser'' ''a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company,'' but provides that the exception does not apply to ''any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company.'' The Investment Advisers Act also provides that ''if in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser'' *See* Section 202(a)(11) of the Investment Advisers Act.

[910] One commenter stated that, ''given the dispersion of municipal advisory activities throughout the bank, banks may not be able to consolidate the activities in a *single* department or division as is contemplated in the analogous language for municipal dealer SIDs'' and, as a result, does ''not think the referenced language is workable.'' This commenter also stated that the Commission should not dictate the structure of a bank's municipal business. *See* American Bankers Association Letter I.

The Commission notes that it is not requiring banks to consolidate their municipal advisory activities into a SID. Rather, to the extent that a bank does not otherwise qualify for an exclusion or exemption (such as the exemption for banks with respect to certain activities described above), the bank may choose to consolidate its municipal advisory activities into a SID. In such case, only the SID, and not the bank itself, would be required to register as a municipal advisor. Also, as discussed further below, Rule 15Ba1–1(d)(4) would not preclude a finding that a bank has a SID if the bank's municipal advisory activities are conducted in more than one geographic organizational or operational unit, so long as all such units are identifiable and otherwise meet the requirements of the rule with respect to each such unit.

[911] *See* Rule 15Ba1–1(d)(4).

[912] *See, e.g.,* notes 874–889 and accompanying text.

provide additional clarity, however, the Commission is eliminating the specific reference to Section 3(a)(30) of the Exchange Act in the definition of SID that it is adopting because, while based on that definition, Section 3(a)(30) relates specifically to activities of municipal securities dealers, as opposed to municipal advisory activities. The Commission is also clarifying, consistent with the definition for SIDs suggested in the Proposal, that 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 such unit or require that such directors or officers be considered as part of such unit. Further, 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 Rule 15Ba1–1(d)(4), provided, however, that all such units are identifiable and that the requirements of Rule 15Ba1–1(d)(4) 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 paragraph Rule 15Ba1–1(d)(4).[913] With the exception of the reference to Section 3(a)(30) and the removal from the rule text of the Commission's guidance with respect to the activities of directors and senior officers and multiple geographic locations, the other applicable requirements are substantively identical to those suggested in the proposal and based on the rules applicable to municipal securities dealer SIDs.[914]

2. Rule 15Ba1–2

a. Application for Municipal Advisor Registration

Section 15B(a)(1)(B) of the Exchange Act provides that it shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with the relevant provisions of the statute. A ''municipal advisor'' is defined in Section 15B(e)(4) of the Exchange Act to mean, with certain exceptions, ''a person'' that ''provides advice to or on behalf of a municipal entity or obligated person . . . . or undertakes a solicitation of a municipal entity.'' [915] In the Proposal, the Commission indicated that the type of information it should gather from firms versus individuals for registration purposes may be different.[916] As such, the Commission proposed two different registration forms: Form MA for ''municipal advisory firms'' and Form MA–I for ''natural person municipal advisors.'' [917]

In connection with these forms, the Commission also proposed Rule 15Ba1–2(a) and 15Ba1–2(b) for the registration of municipal advisory firms and natural person municipal advisors, respectively. Rule 15Ba1–2(a), as proposed, required a ''person, other than a natural person, including a sole proprietor'' [918] applying for registration with the Commission as a municipal advisor to complete Form MA in accordance with the instructions to the form and to file the form electronically with the Commission. Rule 15Ba1–2(b), as proposed, required a ''natural person (including a sole proprietor)'' [919] applying for registration with the Commission as a municipal advisor to complete Form MA–I in accordance with the instructions to the form and to file the form electronically with the Commission. This proposed requirement applied to, among others, each individual employee of a firm who meets the definition of municipal advisor. The two proposed provisions read together required a sole proprietor to complete both Form MA and Form MA–I.

The Commission requested comments on proposed Rule 15Ba1–2(a) and Form MA. The Commission received no comments directly on proposed Rule 15Ba1–2(a) and is adopting this provision substantively [920] as proposed.[921]

The Commission also requested comments on proposed Rule 15Ba1–2(b) and Form MA–I. Specifically, the Commission solicited comments on the effects of a separate registration requirement for natural persons and firms and 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.[922] The Commission also asked, 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.[923] Finally, the Commission also asked 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.[924]

The Commission received several comment letters regarding the proposed requirement for individual registration of natural person municipal advisors on

[913] The Commission notes that it is not including this clarification in Rule 15Ba1–1(d)(4) itself as suggested in the Proposal. *See supra* note 902.

[914] *See* Rule 15Ba1–1(d)(4)(i)(A)–(B). *See also supra* note 902 and accompanying text. The other differences between the definition suggested in the Proposal and the adopted definition are technical and organizational in nature.

[915] *See supra* Section III.A.1.a. (discussing the definition of the term ''municipal advisor'').

[916] *Id.*

[917] *Id.* A ''municipal advisory firm,'' as defined in the Glossary of Terms for the forms and used hereinafter, is ''any organized entity that is a municipal advisor, including sole proprietors.'' A ''natural person municipal advisor,'' as was defined in the Glossary, as proposed, and used hereinafter, is ''any natural person that is a municipal advisor, including sole proprietors,'' with the further clarification that ''[a] sole proprietor that is a municipal advisor is also a municipal advisory firm.'' *See also infra* notes 918 and 919.

[918] This language in proposed paragraph 15Ba1–2(a) is equivalent to the simpler term, ''municipal advisory firm'' used in the forms and herein, *see supra* note 917. The formulation of the rule language was intended to preclude any misinterpretation of the word ''firm'' as excluding sole proprietors.

[919] The category to which proposed paragraph 15Ba1–2(b) applied is identical to the ''natural person municipal advisor'' defined above. *See supra* note 917. The formulation of the rule language was intended to preclude any misinterpretation that would exclude sole proprietors.

[920] The adopted rule, however, is phrased differently. Rule 15Ba1–2(a), as adopted, provides: ''A person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA (17 CFR 249.1300) in accordance with the instructions in the Form and file the Form electronically with the Commission.''

The adopted rule no longer includes the phrase ''person, other than a natural person, including a sole proprietor'' to describe the person subject to registration on Form MA. As discussed below, under the adopted rules, natural persons that engage in municipal advisory activities solely on behalf of a firm with which they are associated (generally, as employees) are exempted from registration. Thus, such persons do not need to be excluded from Rule 15Ba1–2(a), which applies to municipal advisors ''applying for registration.'' In addition, sole proprietors do not need to be identified specifically among the persons who are required to complete Form MA.

[921] As discussed in the Proposal at 76 FR 838, Rule 15Ba1–2(a) requires firms that are currently registered on Form MA–T to register anew on Form MA.

[922] *See* Proposal, 76 FR 851.

[923] *Id.*

[924] *Id.*

Form MA–I.[925] One commenter asserted that the Commission should not require individuals to register separately on Form MA–I.[926] This commenter stated such requirement would not only impose significant burden and costs on municipal advisory firms and their individual associated persons but also would ''force the SEC to devote substantial resources to processing many individual applications for registration'' in addition to processing municipal advisory firms' registrations on Form MA.[927] This commenter noted that the Commission expected approximately 21,800—if not more—individuals to register as municipal advisors on Form MA–I [928] and that ''[t]he sheer number of registrations would place significant strain on the SEC's budget and personnel, especially if it plans to review all applications for municipal advisors that are filed under the permanent registration program.'' [929] The commenter questioned ''whether the incremental regulatory benefit (which [the commenter] does not believe would be significant) stemming from the public availability of the information that would be produced by a system of individual registration would justify this massive resource commitment by both applicants and the SEC.'' [930] Another commenter also suggested that the Commission eliminate individual registration of registrants' employees.[931]

Two commenters argued that the statute does not require individual registration of natural person municipal advisors.[932] One of these commenters asserted that the statute appears to intend that registration of municipal advisors be limited to entities (including partnerships, unincorporated organizations, and sole proprietors).[933] This commenter also stated that such entities would provide the critical information about individuals (including associated persons of the municipal advisor entity) during the registration process.[934]

Another commenter believed that ''dual reporting'' on Forms MA and MA–I ''could lead to confusion'' and that ''there could be inadvertent inconsistencies in the information.'' [935] In particular, the commenter noted that, under the Proposal, natural persons would be required to maintain and comply with recordkeeping and inspection requirements, which, in the commenter's view, would be ''a significant burden'' without ''any meaningful benefit.'' The commenter suggested that the Commission eliminate registration for natural persons altogether, or at least require natural persons to register as ''registered representatives,'' without recordkeeping and inspection requirements.[936] Similarly, another commenter believed that, rather than introducing a new Form MA–I to provide for registration of natural persons, FINRA's Form U4 should be adapted to allow for registration of individuals.[937]

The Commission has carefully considered the issues raised by commenters on the Proposal. In response to these comments, the Commission is modifying its approach in the final rules and is not adopting Rule 15Ba1–2(b) and Form MA–I as proposed. Specifically, the Commission is exempting certain natural persons from the requirement to register as municipal advisors [938] and is modifying Rule 15Ba1–2(b) and Form MA–I accordingly. Rule 15Ba1–3, as adopted, exempts from municipal advisor registration natural persons who are associated persons of a registered municipal advisor and who engage in municipal advisory activities solely on behalf of a registered municipal advisor.[939] In practical terms, this exemption means that employees of municipal advisory firms who do not engage in municipal advisory activities independently of their firms (*e.g.,* by engaging in municipal advisory activities on the side as a sole proprietor) will not be required to register as municipal advisors.

While the Commission is not requiring municipal advisor registration for these natural persons, the Commission is requiring municipal advisory firms to provide the Commission with information relating to these exempted natural persons. In this regard, Rule 15Ba1–2(b), as adopted, requires the municipal advisor to complete and file with the Commission Form MA–I for each of its natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[940] While Form MA–I, as adopted, is not a form for individual registration of natural persons, adopted Form MA–I requires municipal advisory firms to provide similar information regarding its associated natural persons as proposed Form MA–I required (with some modifications, as discussed below).

The Commission believes that the information obtained from Form MA–I is necessary and appropriate to assist

[925] *See, e.g.,* Deloitte Letter; JPMorgan Chase & Co. Letter; MSRB Letter I; and SIFMA Letter I.

[926] SIFMA Letter I. The commenter also argued that the separate registration requirement would be ''excessively burdensome and costly.'' Although this description was made primarily in the context of the commenter's belief that the information requested by Form MA–I regarding individuals ''largely duplicates Form MA's disclosures regarding a municipal advisor's associated persons,'' the Commission believes that the commenter also intended it as a reason to eliminate individual registration regardless of the extent of the information required on the form. Regarding the commenter's concern about duplication, *see infra* notes 1171–1173 and accompanying discussion.

[927] *See* SIFMA Letter I.

[928] *Id.* The commenter added that ''[t]his would be in addition to the 800 municipal advisory firms that have already registered with the SEC on Form MA–T and would be required to re-register on Form MA, and at least 200 additional firms that are also expected to register.'' For the basis of the referenced Commission's estimate, *see* Proposal, 76 FR 865.

[929] *See* SIFMA Letter I.

[930] *Id.*

[931] *See* JPMorgan Chase & Co. Letter. This commenter also advocated the ''simplification of Form MA'' and more broadly criticized the scope of the proposed rules.

[932] *See* SIFMA Letter I (asserting that ''the registration of individuals in the manner proposed by the SEC is not called for in any respect by Section 975'') and MSRB Letter I.

[933] *See* MSRB Letter I.

[934] *Id.* The commenter further maintained that forms relating to individuals at municipal advisor firms should be viewed as officially submitted by the municipal advisor entity. (To clarify, however, the commenter was questioning why individuals within a firm that is itself acting as a registered municipal advisor should be viewed as municipal advisors rather than as associated persons of a municipal advisor.)

[935] Deloitte Letter. This letter, like SIFMA Letter I, *see supra* note 926, tied the argument against separate registration for individuals to its belief that ''separate registration for natural persons is largely redundant.''

[936] *See id.*

[937] *See* Financial Services Roundtable Letter. *See also infra* note 992 and accompanying text for information concerning Form U4 and further discussion.

[938] *See* Rule 15Ba1–3, as adopted, which provides: ''A natural person municipal advisor shall be exempt from section 15B(a)(1)(B) of the Act (15 U.S.C. 78o–4(a)(1)(B)) if he or she: (a) [I]s an associated person of an advisor that is registered with the Commission pursuant to section 15B(a)(2) of the Act (15 U.S.C. 78o–4(a)(2)) and the rules and regulations thereunder; and (b) [e]ngages in municipal advisory activities solely on behalf of a registered municipal advisor.''

[939] This exemption does not include sole proprietors, who must register as a municipal advisor on Form MA and also file a Form MA–I.

[940] *See* Rule 15Ba1–2(b), as adopted, which provides: ''(1) A person applying for registration or registered with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA–I (17 CFR 249.1310) with respect to each natural person who is a person associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf in accordance with the instructions in the Form and file the Form electronically with the Commission. (2) A natural person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4), in addition to completing and filing Form MA pursuant to paragraph (a), must complete Form MA–I (17 CFR 249.1310) in accordance with the instructions in the Form and file the Form electronically with the Commission.''

the Commission in assuring compliance with Section 15B of the Exchange Act and the rules thereunder. The Commission believes that exempting certain natural persons from registration and requiring municipal advisors to complete and file a Form MA–I for certain exempted natural persons retains the benefits of individual registration discussed in the Proposal while also addressing the concerns raised by commenters. Specifically, the final rules and forms mitigate commenters' concerns about imposing registration obligations upon the large number of individuals without negating the important disclosures and other benefits that the Commission believes would be obtained through Form MA–I.[941] For example, as discussed in the Proposal, the information provided by Form MA–I would help the Commission (i) manage its regulatory and examination programs by assisting the Commission in identifying municipal advisors and understanding their business structures; (ii) prepare for its inspection and examination of municipal advisors; and (iii) oversee the municipal securities market and investigate possible wrongdoing.[942] This approach would also 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 each natural person for whom the municipal advisor completed and filed a Form MA–I.[943]

This approach also would help to streamline the manner of gathering pertinent information, reduce confusion in the disclosure process, and reduce inconsistencies in the information reported because the municipal advisory firm will be required to complete and file Form MA and Form MA–I for each of the associated natural persons engaged in municipal advisory activities on its behalf.[944] Indeed, commenters observed that a registered municipal advisory firm should provide critical information about its employees who engage in municipal advisory activities, rather than require the individual's separate registration.[945] Accordingly, as adopted, Rule 15Ba1–2(b), Rule 15Ba1–3, and Form MA–I will serve this purpose. Finally, the Commission also believes that eliminating the requirement for individual municipal advisors to separately register addresses commenters' concerns regarding regulatory efficiency, as it will allow the Commission to direct resources that would have otherwise been required to review many thousands of these individuals' applications to other regulatory matters.

As stated above, one commenter argued against individual registration, claiming that, under the Proposal, natural persons would be required to maintain and comply with recordkeeping and inspection requirements, which, in the commenter's view, would be ''a significant burden'' without ''any meaningful benefit.'' [946] The Commission notes, however, that the recordkeeping obligations imposed by the Proposal always applied only to municipal advisory firms.[947]

The Commission recognizes that the rule, as adopted, places on municipal advisory firms an obligation to file a Form MA–I for each individual employee that acts as a municipal advisor on its behalf. The Commission notes that, in the context of broker-dealer regulation, Form U4, which is required of individual employees and asks for much the same information as Form MA–I, is generally filed by the employees' firms.[948] Indeed, commenters appeared to favor a regime in which firms submit information regarding their employees rather than one in which each employee submits information separately.[949]

The Commission notes further that, as described below,[950] the information that firms will need to obtain to complete Form MA–I is primarily the individual's full legal and other names, social security number, and employment and residential history, other business activities in which the employee is engaged, and his or her disciplinary history. The Commission notes that, in any case, a firm generally must obtain information regarding any relevant criminal, regulatory, or civil judicial history concerning any of its associated persons [951] in order to accurately complete Form MA for purposes of its own registration.[952] In addition, to help ensure adequate regulatory oversight, aid the prosecution of wrongdoing, and benefit municipal entities and investors, the final Form MA–I collects substantially the same information as required under the proposed form.[953] Moreover, although under the adopted rules employees of municipal advisory firms are not required to register independently, they are otherwise not exempt from any other provision relating to municipal advisors.

The Commission received no comments on the requirement, under the Proposal, for a sole proprietor to file both Form MA and Form MA–I. Accordingly, the Commission is retaining this requirement in the rules, although, in view of the other changes described above, a provision has been added to set forth explicitly that a natural person applying for registration must file Form MA–I in addition to Form MA.[954]

[941] *See, e.g.,* SIFMA Letter I.

[942] *See* Proposal, 76 FR 850.

[943] *See id.,* at 851.

[944] This approach does not address the argument of commenters that Form MA–I is redundant of Form MA. That issue is addressed in the discussion below regarding the information requested in Form MA–I. *See infra* notes 1171–1173 and accompanying text.

[945] *See, e.g.,* MSRB Letter I.

[946] *See id.*

[947] As proposed, the text of Rule 240.15Ba1–7(a) provided: ''Every person, other than a natural person, including sole proprietors, *registered or required to be registered under Section 15B* of the Securities Exchange Act . . . shall make and keep true, accurate, and current the following books and records relating to its municipal advisory activities . . . . '' (emphasis added). *See* Proposal, 76 FR 883. The highlighted language is retained in the recordkeeping rule, as adopted, which has been renumbered as Rule 240.15Ba1–8. *See infra* Section III.C.

[948] The Commission notes, moreover, that Form U4 is used for registration. Under the rules as adopted Form MA–I is not a registration form. It is a form to obtain information about persons who engage in municipal advisory activities on behalf of the firm.

[949] *See, e.g.,* MSRB Letter I and citation at *supra* note 934. *See also* Deloitte Letter, stating: ''Alternatively, if the SEC does not eliminate separate registration for natural persons, the Commission should require such persons to register as registered representatives of municipal advisors, as is done in the broker-dealer context, rather than as municipal advisors.'' Although the commenter is suggesting an alternative kind of registration for natural persons, and does not specifically state that the applications for registration of such persons would be filed by their firms, the analogy to the broker-dealer context suggests that the proposed alternative would operate in a similar manner, where firms file an individual's Form U4.

[950] *See infra* Section III.A.2.c., ''Information Requested in Form MA–I.''

[951] *See infra* note 1054 for the meaning of ''associated persons'' in this context.

[952] *See infra* Section III.A.2.b., under ''Item 9: Disclosure Information and Related DRPs.'' Thus, for purposes of completing an employee's Form MA–I, a firm will additionally need to obtain the information required by the form concerning investigations of the employee; customer complaints, arbitration, and civil litigation relating to municipal advisor-related or investment-related matters involving the employee; terminations of the employee; and outstanding judgments or liens against the employee. This information is substantially the same as required by Form MA–I under the Proposal, with the modifications discussed below. *See infra* Section III.A.2.c., ''Information Requested in Form MA–I.''

[953] *See id.*

[954] *See* Rule 15Ba1–2(b)(2) of the adopted rules, 17 CFR 240.15Ba1–2(b)(2), which provides: ''A natural person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4), in addition to completing and filing Form MA pursuant to paragraph (a), must complete Form MA–I (17 CFR 249.1310) in accordance with the

Continued

The Commission stated in the Proposal that it was considering whether Form MA and Form MA–I should be submitted through the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') or otherwise.[955] The Commission requested comment on whether the electronic registration system to be established should have the ability to cross-check other electronic systems, such as IARD and CRD, and whether requiring the filing of forms on EDGAR would be an appropriate means to make the requested information available.[956]

Two commenters favored the use of FINRA's electronic registration system for CRD and IARD or some similar system for the registration of municipal advisors.[957] One commenter stated that this system would ''allow regulators to easily find filings for firms and individuals, as well as cross reference between the CRD and IARD systems.'' [958] The commenters believed that use of FINRA's system would allay concerns that EDGAR would subject registration information to ''unnecessary public scrutiny'' [959] and ''compromise the confidentiality of operating performance data for privately held Municipal Advisors.'' [960]

After carefully considering the comments, the Commission has determined to require the forms to be submitted through EDGAR.[961] Although EDGAR is known primarily as the vehicle through which public companies file their annual and quarterly reports and other disclosures, the Commission has adapted EDGAR for other information gathering purposes.[962] Further, collecting information regarding municipal advisors through EDGAR should enable the Commission to efficiently retrieve and analyze data in a cost-effective manner to carry out its oversight of municipal advisors and their municipal advisory activities. The Commission notes that, while IARD, which is an electronic filing system that facilitates investment adviser registration, is funded through user fees,[963] there is no comparable provision in Section 975 of the Dodd-Frank Act authorizing the Commission to charge municipal advisors (or to authorize another entity to collect) registration fees. Accordingly, the Commission has determined to leverage its existing technology to serve as a mechanism by which municipal advisors can register with the Commission. The Commission further notes that EDGAR is a widely utilized resource that is already familiar to investors and other interested parties seeking information about public companies, and believes that municipal entities, investors, other regulators, and members of the public seeking information about municipal advisors should not have difficulty learning how to use the system.

Regarding the comment that the use of FINRA's CRD and IARD systems would be preferable because it would allow regulators to cross reference the information in Forms MA and MA–I with information in those other systems, the Commission notes that, as discussed further below, Form MA requires a municipal advisor that has been assigned a number either under the CRD system or the IARD system (a ''CRD Number'') to provide that number in completing the form.[964] In addition, Form MA asks an applicant specifically whether it is registered with the Commission in various other capacities (*e.g.,* municipal securities dealer, government securities broker-dealer, or other category that the applicant must specify) and, if so, to provide the relevant file numbers.[965] In a similar fashion, an applicant is required to supply file numbers for any registrations it has with another federal agency or state or other U.S. jurisdiction.[966] Form MA–I requires the municipal advisory firm filing the form to provide the relevant individual's CRD Number, if registered on the CRD or IARD system; list any other names by which the individual is known or has been known; and provide the name, registration number, and the firm's EDGAR CIK (Central Index Key) number.[967] These identifying numbers should assist municipal entities, regulators, and the public to access any other publicly available information about the municipal advisor. Although EDGAR will not automatically provide an electronic link to the information on the CRD and IARD systems, these systems are nevertheless readily accessible to regulators, municipal entities, and to the public.

With respect to commenters' concerns regarding privacy, the Commission notes that, while information required in Form MA and Form MA–I generally will not be confidential, some information, such as social security numbers, will be kept confidential (subject to the provisions of applicable law).[968] The EDGAR system will block

instructions in the Form and file the Form electronically with the Commission.'' The addition of Rule 15Ba1–2(b)(2), which relates to sole proprietors, was necessary because Rule 15Ba1–2(b)(1), as adopted, is worded specifically to require municipal advisors that are firms to file Form MA–I with respect to associated persons who engage in municipal advisory activities on their behalves, and would not by definition apply to sole proprietors.

[955] *See* Proposal, 76 FR 839.

[956] *See id.*

[957] *See* NASAA Letter and letter from Gary Kimball, President, Specialized Public Finance, Inc., dated February 22, 2011 (''Specialized Public Finance Letter'').

[958] *See* NASAA Letter.

[959] *See* Specialized Public Finance Letter. In this regard, the commenter mentioned specifically social security numbers.

[960] *Id.*

[961] As discussed in the Proposal, because the registration forms will be required to be submitted through EDGAR, the electronic filing requirements of Regulation S–T will apply. *See generally* 17 CFR 232 (governing the electronic submission of documents filed with the Commission). The Commission will provide, in the municipal securities area of its Web site, full instructions on how applicants for municipal advisor registration that are not currently EDGAR filers can acquire authorized codes to access the system. These instructions have now also been added to the General Instructions for the Form MA series. General information about EDGAR is available at *http://www.sec.gov/info/edgar.shtml*, where the EDGAR Filer Manual can also be accessed. The Commission recommends that applicants read this filer manual before they begin using the system.

[962] Most recently, for example, the Commission determined to adapt EDGAR to accept Form 13H filings required under the ''Large Trader Reporting'' regime established by new Rule 13h–1 under Section 13(h) of the Exchange Act. *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (August 3, 2011).

[963] *See* Section 204(c) of the Advisers Act, which permits the Commission to charge fees associated with filings and the maintenance of a filing system.

[964] *See infra* Section III.A.2.b., ''Information Requested in Form MA,'' discussion of Item 1, ''Identifying Information.'' *See also infra* note 1007.

[965] *See infra* Section III.A.2.b.

[966] *Id.*

[967] *See infra* Section III.A.2.c., ''Information Requested in Form MA–I,'' discussion of Items 1 and 2, ''Identifying Information and Other Names.''

[968] The Proposal specified that social security numbers would not be made public. *See* Proposal, 76 FR 867, 868, and 869. The forms, as adopted, specify additional instances in which responses will be kept confidential subject to the provisions of applicable law. *See, e.g.,* Item 8 of Schedule A of Form MA (advising applicants that social security numbers, foreign identity numbers, and dates of birth will not be publicly disseminated) and Item 3 of Form MA–I, as adopted (advising that private residential addresses disclosed in completing the residential history section of the form will not be included in publicly available versions). The Commission has determined that it is appropriate to block this information from public view, as well. To make this clear, in the forms, as adopted, in each place where an applicant is asked for a social security number, foreign identity number, private residential address, or a date of birth, guidance has been added stating that the information will not be included in publicly available versions of the form. In addition, at various other places in the forms that ask for an address, the filer is asked to indicate whether the address provided in response is a private residence and is advised that, if so, the address will not be included in publicly available versions of the form. One of the DRPs in Form MA–I, which asked whether the docket or case number of a particular case is the municipal advisor's social security number, bank card number, or personal identification number, has been deleted as unnecessary.

the relevant information in these forms in the versions that will be made public.

One commenter argued that information relating to operating performance of privately held municipal advisors should be kept confidential.[969] The commenter did not specify which particular questions in the forms it considered problematic. The Commission believes, however, that the public interest in making the information available—to allow municipal entities to better evaluate candidates for service in municipal advisory roles and to provide investors in municipal securities with clearer knowledge of who may be influencing the use and outcome of their investments—outweighs this type of confidentiality concern.[970]

The Commission received no comments on the requirement in proposed Rules 15Ba1–2(a) and (b) that Forms MA and MA–I, respectively, must be filed electronically, and is adopting this requirement as proposed. The Commission also received no comments on paragraph (c) of proposed Rule 15Ba1–2, which provided that the forms would be considered filed with the Commission ''upon acceptance by the [applicable electronic system].'' However, the Commission is adopting the rule with modifications.

As proposed, Rule 15Ba1–2 provides that Forms MA and MA–I ''shall be considered filed with the Commission upon acceptance by the [applicable electronic system].'' As adopted, the rule instead provides that the forms are considered filed upon ''submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–I (17 CFR 249.1310) . . .'' The Commission is modifying the rule to state that the form is considered filed upon ''submission'' to EDGAR rather than upon ''acceptance'' to align the rule with the terminology used by the EDGAR system. Further, the Commission is modifying the rule to provide that Form MA will be considered filed upon submission of a ''completed Form MA, together with all additional required documents,'' to clarify that, if a Form MA is not considered complete, the Commission's statutory forty-five day review period will not commence.[971] Moreover, because a municipal advisor applying for registration under the final rules is responsible for submitting Form MA–I for each associated person engaging in municipal advisory activities on its behalf, the Commission believes it appropriate to stipulate that the firm's application for registration will be considered filed only if the firm has submitted all requisite Form MA–Is.

When an applicant attempts to transmit its Form MA electronically, EDGAR performs the initial automated checks to determine whether questions that require responses have been answered and to detect, in certain instances, defective responses. For example, if an applicant indicates that it has three Web sites but provides, contrary to instructions, only two corresponding Web site addresses, EDGAR will detect the deficiency.[972] In such instance, EDGAR will not permit the applicant's submission. However, if a form passes EDGAR's automated checks, EDGAR will display a message indicating that the submission was successfully transmitted and will provide an ''accession number,'' which permits the applicant to enter the system to check the status of its application. At this point, the applicant is also advised that its application is not ''accepted,'' which is an EDGAR term for not ''approved,'' and EDGAR will display the status of the application as ''In Progress.''

Once an application passes EDGAR's initial automated check and is successfully transmitted, the Commission staff will check the application for the types of deficiencies that may not be detected through automation, and if the Form MA is considered incomplete, the applicant will receive by email an EDGAR-generated notice of suspension. The notice will inform the applicant that the transmission has been suspended and the reason for the suspension. The notice will also instruct the applicant to make corrections and re-transmit the application to the Commission in its entirety.

The Commission notes that, within forty-five days of the date a complete Form MA is considered filed, the Commission shall by order grant registration or institute proceedings to determine whether registration should be denied. The Commission also notes that the statutory review period for a filed Form MA may be longer if the applicant consents to a longer time period. If the Commission determines to grant registration, an EDGAR-generated email will be sent to inform the applicant that the filing has been ''accepted'' and the Commission will issue a formal order of approval separately.

The Proposed paragraph (d) of Rule 15Ba1–2 provided that Forms MA and MA–I constitute ''reports'' within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[973] The Commission received no comments on paragraph (d) and is adopting this provision as proposed. As a consequence, it is 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.

b. Information Requested in Form MA

Municipal advisors that are municipal advisory firms (including sole proprietors) must submit Form MA to register with the Commission. The Commission received several comments, as discussed further below, on the information it proposed to require from applicants in completing Form MA.[974] After carefully considering the comments, the Commission is adopting Form MA substantially as proposed, with some modifications, as discussed below.

Form MA is modeled primarily on Form ADV (Part 1),[975] which is 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. The information that applicants are required to provide on the form is described in detail below. As discussed in the Proposal, the items in Form MA were drafted broadly to apply to the different types of municipal advisors that may register with the Commission.[976]

Form MA asks for information about the municipal advisor and persons associated with the advisor. The Commission believes it necessary to obtain the requested information to manage the Commission's regulatory and examination programs and to make such information available to the MSRB

[969] *See supra* note 960.

[970] Form ADV, upon which Form MA was substantially modeled (*see* text accompanying *infra* note 975), requires a similar level of disclosure. The Commission would make this information publicly available regardless of the electronic registration system that is used. *See also infra* notes 1046 and 1048 and accompanying text.

[971] If a Form MA is complete and all additional required documents are attached, the form is considered filed and the forty-five day period for the Commission to act upon the application (*i.e.,* either approve or institute proceedings to determine whether it should be denied) begins.

[972] *See infra* note 1003 for more examples.

[973] *See* Rule 15Ba1–2(d).

[974] *See infra* notes 979–987.

[975] *See* 17 CFR 279.1. *See also* Proposal, 76 FR 840.

[976] *See* Proposal, 76 FR 840.

to better inform its regulation of municipal advisors. The information will 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 the municipal advisor's clients. In addition, the information will assist the Commission in understanding the kinds of activities in which the applicant participates. The information will also be useful to the Commission in tailoring any requests for additional information that the Commission may send to a municipal advisor. Furthermore, the required information will 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 implemented.[977]

Moreover, the Commission believes that the information sought will enable municipal entities and potential obligated persons to better assess the experience and background of municipal advisors in deciding whether to engage the services of, or do business with, any particular municipal advisor. Similarly, information about the persons serving as municipal advisors can be important to investors in deciding whether to purchase specific municipal securities. In determining what information should be disclosed, the Commission also considered the broader public interest in the availability of information about municipal advisors to the public.[978]

The Commission received several comments regarding the extent and kind of information sought on Form MA, as a general matter, and the impact that the requirement to provide this information will have on municipal advisors.[979] While one commenter generally approved of the content of the questions, most of the commenters on this subject believed that the scope of information sought was too broad, that the form should ask different questions for different kinds of municipal advisors, or that providing the answers would be too burdensome.

Specifically, one commenter stated its belief that the information requested was ''generally appropriate'' and that it would assist the Commission in its examination and enforcement activities as well as assist its rulemaking activities.[980] Another commenter stated that it does not object in principle to requiring municipal advisors to make disclosures similar to the disclosures required of registered investment advisers, but urged that the Commission ''tailor carefully'' any disclosure document to ''ensure that the information to be disclosed relates only to the municipal advisor activities of the provider, rather than broadly requiring companies to disclose information unrelated to municipal advisory activities.'' [981] Another commenter suggested that the forms be tailored for various categories of advisors, instead of a ''one-size-fits-all'' approach.[982] According to another commenter, ''the disclosures required for investment advisers on Form ADV, on which proposed Form MA is based, are, in many cases, not relevant to municipal advisors.'' [983] The commenter maintained that many of the other questions drawn from Form ADV are ''not likely to obtain useful responses from municipal advisors'' and that the Commission ''has not articulated a convincing purpose for much of the information.'' [984]

Some commenters additionally believed that supplying the information requested on the proposed forms would be too burdensome on certain firms and individuals, but varied on the specifics.[985] On the one hand, some commenters believed, as one commenter expressed, that ''the scope of the proposed information to be collected'' in Form MA ''is exhaustive and could place a burden on small municipal advisors.'' [986] On the other hand, one commenter believed that large organizations would incur ''significant time, burden, and expense in identifying personnel involved in activities that would subject them to registration.'' [987]

In considering these comments, the Commission carefully analyzed each aspect of Form MA as set forth in the Proposal, consulting with and drawing on the experience and expertise of Commission's enforcement and examination staffs. As already stated, the Commission had paid conscious and due attention in developing Form MA to the differences between the activities of investment advisers and those of municipal advisors. The Commission has analyzed proposed Form MA in the light of the comments received, specifically with an eye to making any possible further adjustments to reflect the field of municipal advisory activities and to remove any proposed elements of Form MA that are not appropriate to the regulation of municipal advisors or valuable for such regulation in consideration of the burdens of completing the form.

The Commission continues to believe that the information requested will be valuable in establishing and maintaining effective oversight of municipal advisors. The various purposes to which the Commission intends to put the information to use, as well as its value for municipal entities and investors, have been broadly described above. The decision to model Form MA on Form ADV was based, in part, on the Commission's belief that the level of information sought in Form ADV is important, appropriate, and not unduly burdensome for participants engaged in providing investment advice, bearing in mind the goal of protection of investors and the public interest. The Commission believes that the regulation of municipal advisors warrants obtaining a similar level of information as pertinent to municipal advisors.[988]

[977] *See id.,* at 841.

[978] *See id.*

[979] *See, e.g.,* Acacia Financial Group Letter; Financial Services Roundtable Letter; JP Morgan Chase Letter; Managed Funds Association Letter; MSRB Letter I; NAESCO Letter; SIFMA Letter I; Specialized Public Finance Letter.

[980] *See* MSRB Letter I. The MSRB also expressed the hope that the Commission would receive ''significant meaningful feedback from small municipal advisors regarding the potential burdens the Rule Proposal would impose, and give due weight to such feedback in light of the Congressional intent regarding regulatory burden on small municipal advisors.'' At the same time, the MSRB believed that the information gleaned from the forms will ''help the MSRB to better gauge the parameters of what should be considered a small municipal advisor and to structure its rules to effectuate the intent of Section 15B(b)(2)(L)(iv) [of the Exchange Act],'' which requires that the MSRB ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.''

[981] *See* NAESCO Letter.

[982] *See* Acacia Financial Group Letter.

[983] *See* SIFMA Letter I.

[984] *See id.* The commenter cited in particular in this regard the proposed disclosure requirements in Form MA relating to a municipal advisor's clients; compensation arrangements; other business activities; financial industry affiliations; proprietary and sales interests in its municipal advisory clients' transactions; and investment or brokerage discretion. The Commission believes that information in each of these areas can shed light on the possible conflicts of interest that a municipal advisor may have when providing advice. *See also infra* notes 1065, 1087, and 1119 and accompanying text, regarding this commenter's comments relating specifically to disclosures about affiliates and other associated persons.

[985] *See, e.g.,* Acacia Financial Group Letter, SIFMA Letter I.

[986] *See* Acacia Financial Group Letter.

[987] *See* SIFMA Letter I.

[988] For example, knowledge of the kind of clients that a municipal advisor serves may be useful to a municipal entity in determining whether that advisor has the background and expertise necessary to provide advice regarding the issuance that the

The Commission notes that the MSRB, the statutorily mandated rulemaking body for the municipal securities market, believes that the information obtained generally will contribute to the Commission's and its own regulatory activities.[989]

Some commenters believed that the information sought by Form MA with respect to many municipal advisors is information already available to the Commission through other registrations and that the proposed disclosures would therefore be redundant.[990] One commenter argued that ''adding new layers of regulation in this area will not serve to enhance the protection of municipal entities or investors.'' [991] Another commenter contended that it would be ''more efficient for the SEC to leverage existing registration forms, which have years of interpretive guidance behind them, than to create a new form seeking much of the same information as required by Forms BD and U4.'' [992] To address this issue, some suggested that the Commission allow persons that are already registered with the Commission—such as broker-dealers, investment advisers, and municipal securities dealers—to check an additional box on their primary registration forms already filed with the Commission or to provide them with a short-form registration process.[993] Short of this, commenters urged that, if such persons must complete Form MA, they should be allowed to incorporate by reference on Form MA any information that is included on another registration form and be required to provide on Form MA only such additional information as deemed essential regarding municipal advisory activities.[994]

The Commission notes that Form MA, both as proposed and adopted, allow for incorporation by reference of certain information that already has been submitted on certain other forms by the applicant, any of its associated persons, or another entity pursuant to the requirements of other regulatory regimes. Specifically, each of the Disclosure Reporting Pages (''DRPs'') of Form MA permits incorporation by reference to DRPs that are already on file with regulators.[995] The DRPs are generally where the most significant amount of information is requested on Form MA and on which applicants will likely need to expend the most time and effort.

Form MA, as adopted, more prominently highlights the option to incorporate information by reference. Part A of each DRP asks for basic information regarding the person(s) or entity(ies) concerning whom the DRP must be filed. Immediately thereafter, in Part B, the form asks if there is another DRP or other disclosure already on file in the IARD, CRD, or EDGAR system containing the information required by the DRP. If the answer is ''Yes,'' the form asks the applicant to identify where the disclosures may be found. In addition, for the benefit of regulators, municipal entities, and other interested parties, the DRPs ask for information that will enable such parties to locate the referenced document easily, by requiring the applicant to provide the name of the registrant on the referenced document, the relevant registration number, and other identifying information. Thus, for all persons for whom disclosures of criminal, regulatory, and civil judicial actions must be made, Form MA already allows for incorporation by reference. The Commission believes that the accommodation of incorporation by reference for these disclosures will eliminate a significant amount of redundancy to which the commenters refer.

The Commission believes that commenters' suggestion to allow applicants already registered with the Commission under other regulatory regimes to check an additional box on their primary registration forms [996] would not achieve the aim of the municipal advisor registration regime. Specifically, the Commission believes that persons seeking to compile, compare, and analyze data pertaining to registered municipal advisors, as well as regulators overseeing compliance with rules and regulations applicable to registered municipal advisors, should generally be able to easily access within one system relevant information about municipal advisors.

The Commission notes that the vast majority of applicants registering under the permanent registration regime would be new Commission registrants.[997] As such, the majority of all information pertaining to municipal advisors will be centralized in EDGAR. On the other hand, the Commission acknowledges that, because disclosures required by Form MA DRPs and Form MA–I DRPs may be incorporated by reference from other forms, some

entity is contemplating. Similarly, information regarding the advisor's compensation arrangements generally may help a municipal entity evaluate the advisor's proposed compensation arrangements for the issuance under consideration. Such information can also be valuable to regulators in uncovering irregularities when questions are raised regarding a municipal advisor's motives and/or business conduct with respect to a particular transaction. The information that a municipal advisor provides regarding its other business activities, its financial industry affiliations, the proprietary and sales interests it may have in its municipal advisory clients' transactions, and the investment or brokerage discretion that it is granted in carrying out its services may help municipal entities, investors in municipal securities, and regulators assess whether conflicts of interest may affect the advice that the firm provides or may have influenced its advice in a transaction under investigation. The Commission believes that obtaining such information is consistent with the intent of the Dodd-Frank Act in establishing a regulatory framework for municipal advisory activities.

[989] *See* MSRB Letter I. The MSRB also commented that the Commission ''should give due weight to feedback from small municipal advisors regarding the potential burdens in light of the Congressional intent regarding regulatory burden on small municipal advisors.'' *See id.* The Commission addresses the burden for smaller municipal advisory firms in the Final Regulatory Flexibility Analysis below. *See infra* Section IX.

[990] *See, e.g.,* JP Morgan Chase Letter; SIFMA Letter I; and Specialized Public Finance Letter. *See also* Financial Services Roundtable Letter (maintaining that, for registered broker-dealers, ''Form MA is largely duplicative of Form BD''); and Managed Funds Association Letter (maintaining that proposed Form MA, ''but for items specifically relating to municipal advisory activities,'' is ''substantially similar to Form ADV'').

[991] *See* JP Morgan Chase Letter. This view was expressed particularly with respect to traditional banking products and services. *See also supra* Section III.A.1.c.viii., regarding banks.

[992] *See* Financial Services Roundtable Letter. Form U4 is the Uniform Application for Securities Industry Registration or Transfer, available at *http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf.*

[993] *See* SIFMA Letter I. *See also* Managed Funds Association Letter, Financial Services Roundtable Letter.

Also, one commenter suggested that, instead of registering a second time as a municipal advisor, an investment adviser should be permitted to amend its Form ADV to reflect the fact that it engages in municipal advisory activities. This commenter also suggested permitting state-registered investment advisers to register as municipal advisors by amending their Forms ADV. *See* ABA Letter.

[994] *See* SIFMA Letter I, ABA Letter.

[995] As explained below, Item 9 of Form MA requires an applicant to provide certain information concerning any criminal, regulatory, and civil judicial actions relating to the applicant or any of its associated persons. For each action reported in Item 9, the applicant is required to complete a DRP by providing for further details, such as the court where the charges were filed and when, a description of the charge and the circumstances relating to it (in the case of criminal actions); the authority that initiated the action and a description of the allegations and the product-type (in the case of regulatory actions); or the initiator of the court action, the relief sought, and the product type (in the case of civil judicial actions). The information sought in the DRPs of Form MA is similar to information sought in DRPs that must be filed, as applicable, with Forms BD, ADV, and U4.

[996] *See supra* note 993.

[997] According to MA–T data as of December 31, 2012, there were approximately 1,110 Form MA–T registrants. Of these Form MA–T registrants, 226 were also registered with the Commission as broker-dealers; 39 were also registered with the Commission as investment advisers; and 65 were registered with the Commission as both broker-dealers and investment advisers. Therefore, the vast majority of Form MA–T registrants were new Commission registrants.

information will reside outside EDGAR. However, the Commission notes that, under the temporary registration regime, only about 15% of applicants on Form MA–T indicated a history of criminal, regulatory, or civil judicial action that would require the submission of DRPs under the permanent registration regime. Moreover, not all 15% of municipal advisors indicating such a history would have DRPs on file elsewhere, as many may not be broker-dealers or investment advisers and thus would not be required to file Form BD or Form ADV. Accordingly, the Commission believes that fewer than 15% of municipal advisors should have DRP information stored outside EDGAR, with the majority of information collected under the permanent municipal advisor regime centralized in EDGAR. The Commission also notes that, if applicants that are already registered with the Commission under other regulatory regimes can register as municipal advisors by only checking an additional box on their primary registration form, a municipal entity or investor seeking information about a municipal advisor may not realize that the information they seek is available on a Form BD or ADV, rather than a Form MA or MA–I.

Description of the Form: Introduction

As previously noted, in addition to considering the comments, the Commission analyzed the entire proposed Form MA and its appended schedules and disclosure pages to make any necessary adjustments. The discussion below describes Form MA, as adopted, and notes the substantive changes to the proposed form. At the outset, the Commission notes that it is making some revisions to clarify questions asked in Form MA. Other revisions are intended to elicit additional information. The Commission believes that the additional required data should make the information provided by registrants more useful to examiners, investigators, and other regulatory authorities and/or to municipal entities and investors.[998]

As noted below, the Commission made some revisions to the form to eliminate unnecessary disclosure requirements. Other changes involve a reorganization of the requested information. In general, the Commission intends to improve the picture that municipal entities, investors, and regulators will be able to obtain from Form MAs, whether regarding municipal advisors, in particular, or regarding municipal advisory activities, as a whole. For example, while the proposed DRPs required information generally regarding the disposition of criminal charges or resolution of regulatory or civil proceedings, in the DRPs, as adopted, the questions are more specific and require certain additional details.[999]

Format of Form MA

Form MA, as proposed, required the applicant to provide information describing itself and its business through a series of fill-in-the-blank, multiple choice, and the check-the-box questions.[1000] In the form, as adopted, these questions have been adapted to an electronic, web-based format,[1001] with minor revisions to the text as necessary or appropriate for online completion.[1002] As stated above, EDGAR is designed to detect certain failures to respond to mandatory questions and, to detect, in certain instances, defective responses.[1003]

Form MA also contains several supplemental schedules that must be completed, where applicable, each of which is discussed further below: Schedule A asks for information about the municipal advisor's direct owners and executive officers; Schedule B asks for information about the municipal advisor's indirect owners; Schedule C is used to amend information on either Schedule A or Schedule B; and Schedule D asks for additional information when an applicant answers in the affirmative regarding certain questions in the form and also provides space for any explanations that a filer may wish to add to its application. Form MA also contains DRPs, which require further details about events and proceedings involving the municipal advisor and/or the municipal advisor's associated persons that the applicant was required to report in Item 9 of the main body of the form, and are discussed in the context of Item 9 below.

Form MA, as proposed, first required a municipal advisor to indicate whether it is submitting the form for initial registration as a municipal advisor or submitting an annual update or an amendment (other than an annual update) to a registration as a municipal advisor.[1004] In the electronic form, as adopted, Form MA asks the applicant to indicate, upon entry, whether it is filing an initial form, an annual update, or amendment. Once an initial form is submitted, when a filer subsequently enters the system and selects the choice of annual update or amendment, the most recently submitted version of the form will appear, pre-populated with the responses as completed at that time. Thus, the filer will need only to amend the outdated information.

Item 1: Identifying Information

The Commission proposed Item 1 of Form MA to require essential identifying information regarding the applicant. For the reasons discussed

[998] Although some commenters believed, generally, that the forms, as proposed, required too much information, the Commission believes that the modifications it has made to the forms that ask for additional information will elicit information that can be of significant use to regulators and municipal entities. The discussion below includes the reasons why, in each significant case, the Commission has made the revision. *See, e.g., infra* notes 1028–1030.

[999] *See further* the discussion below regarding Item 9 of Form MA.

[1000] No comments were received on the format of the form.

[1001] For example, where the paper form asked a Yes or No question and, if the answer is Yes, other questions must be answered, in the electronic form those additional questions will appear only if the applicant selected Yes. In the paper form, in some instances when the applicant answers Yes, the form instructs the applicant to supply additional information in Schedule D of the form. In the electronic form, a pop-up screen appears that immediately enables the applicant to complete the additional information. Filers will be able to obtain a paper version of the form at any time through the electronic system, which should help them anticipate in advance the information they will need to gather to complete on the online form. In addition, filers will be able to print out a hard copy version of the form with their responses included in their appropriate places on the form.

[1002] Certain documents, such as a signed and notarized Form MA–NR (required of certain non-residents as discussed below) or copies of court orders required as part of a DRP will need to be converted into a portable document file (PDF) meeting the specifications set forth in the EDGAR Filer Manual, *supra* note 961, and attached to the electronic submission.

[1003] Some examples: If an applicant provides an EDGAR CIK number, the name of the company will be pre-populated in the electronic form with the name assigned to that CIK number and the applicant will not be permitted to list a different name. When an applicant indicates that it is registered under another Commission regulatory regime but supplies a registration number for that regulatory regime that cannot be valid because it is not in the correct numbering format, the system will prevent the applicant from filing the form. If an applicant answers affirmatively to a question that asks whether it only engages in solicitation and does not advise clients, it will not be possible to indicate in response to another question that it advises clients and does not solicit. If an applicant indicates that it has three Web sites but provides the addresses of only two, the system will not permit submission of the form. If an applicant discloses that it or an associated person has been involved in a criminal, regulatory, or civil judicial action, the system will prevent the applicant from filing the form if the appropriate DRP is not completed. If the principal address of a firm in Form MA or the residence of an individual reported in Form MA–I is in a foreign country (which the system can detect because states and countries are indicated by selecting the appropriate name in a drop-down box), the system will not permit submission of the form unless, at the appropriate step in the form, a Form MA–NR is attached.

[1004] Amendments to Form MA are discussed further below. *See infra* Section III.A.5.

below and in the Proposal,[1005] the Commission is adopting Item 1 substantially as proposed but with the minor modifications discussed below.

As proposed and adopted, Items 1–A and B of Form MA 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.[1006] As adopted, Item 1–A also asks for the municipal advisor's CRD Number, if it has one.[1007] Item 1–C of Form MA as proposed and adopted requires a municipal advisor also to provide its Employer Identification Number (or ''EIN,'' a number used with respect to Internal Revenue Service matters) or, if the applicant (such as a sole proprietor) does not have an EIN, a social security number.[1008]

In Item 1–D, as proposed and adopted, 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, such municipal advisor is required to provide its related SEC file number or numbers. Further, if the municipal advisor is a broker-dealer or an investment adviser and has a CRD Number assigned to it either under the CRD system or the IARD system, it is required to provide its CRD Number.

As proposed and adopted, Item 1–D also requires an applicant to indicate whether it is a state-registered investment adviser. In such case, as adopted, Item 1–D additionally requires the applicant to identify the state (or states) with which it is registered,[1009] and adds to this category other U.S. jurisdictions where the applicant is registered.[1010]

Item 1–D, as adopted, additionally requires a municipal advisor to indicate if it is an ''exempt reporting adviser'' with respect to investment adviser registration and, if so, to provide the SEC file number and CRD Number. The category of exempt reporting advisers, discussed in Section III.A.1.c.v. herein, was created by Commission rule after Form MA was proposed. Because exempt reporting advisers are not exempt from municipal advisor registration, if applicable, the Commission believes that the information that such advisers must report to the Commission, and the identifying numbers necessary to ease access to such information, is no less important to regulators of the municipal market, municipal entities, and investors than the equivalent information available regarding municipal advisors who are registered investment advisers.[1011]

The information provided in response to Item 1–D will 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[1012] with the Commission. As discussed in the Proposal, the ability to cross-reference will allow the Commission to assemble more complete information concerning a municipal advisor to inform the Commission's decision to approve or institute proceedings to deny an application for registration as a municipal advisor. The ability to cross-reference will also permit the Commission or any designee[1013] to plan for, and carry out, efficient and effective examinations of registered municipal advisors. By obtaining all of an applicant's regulatory file numbers, the Commission will be able to cross-reference disciplinary information in the CRD or IARD systems with the information on Form MA. This ability would provide the Commission with a more complete understanding of a municipal advisor's structure and business.

Item 1–E asks for the address of applicant's principal office and place of business[1014] and the telephone and fax numbers at that location. As proposed, Item 1–E of Form MA required 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. In consideration of comments, generally, that the form is too burdensome,[1015] in Item 1–E, as adopted, the Commission has determined to require information pertaining only to the five largest offices.

Item 1–F of Form MA, as proposed, asked whether the applicant has one or more Web sites, and, if so, to list them in Schedule D of the form. As adopted, Item–F continues to require an applicant to list all its Web sites, but also requires the address of its principal Web site on the main part of the form and any additional Web site addresses on Schedule D.[1016]

Item 1–G of Form MA, as proposed, required applicants to supply the name, address, email address, and telephone and fax numbers of its Chief Compliance Officer, if it has such an officer, and to list any other title(s) the officer holds. Item 1–H, as proposed, asked for the title of, and similar contact information for, any other person whom the municipal advisor has authorized to receive information and respond to questions about the registration (the ''contact person''). Items 1–G and 1–H are being adopted, as proposed, with a clarification to advise applicants that they must provide the name and contact

[1005] *See* Proposal, 76 FR 841.

[1006] As proposed and adopted, Item 1–B requires any additional names under which the applicant conducts municipal advisor-related business and the jurisdictions in which they are used to be listed in Schedule D.

[1007] Obtaining a municipal advisor's CRD Number, if it has one, enables regulators, municipal entities, and investors in a most basic way to research the background of a registrant. *See, e.g., supra* text accompanying note 964.

[1008] As discussed in the Proposal, the Commission is asking 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 examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78*o*–4(c)). *See* Proposal, 76 FR 840, note 176. *See also supra* note 968.

[1009] Requiring the place(s) of registration directly on Form MA can be helpful to regulators, municipal entities, and investors while imposing little burden upon the applicant. The omission of this disclosure requirement in the proposed version of the form was unintentional.

[1010] The revision to include other U.S. jurisdictions in addition to states has been made throughout the forms.

[1011] As proposed and adopted, an applicant is further asked in Item 1–D whether it is a government securities broker-dealer, and, if so, to provide the SEC file number and bank identifier; whether it has any other SEC registration, and, if so, to specify which registration and the file number; and whether it is registered with another federal or state regulator, and, if so, to specify the regulator's name and the applicant's registration number. As adopted, Item 1–D asks whether the applicant has any additional registrations that were not already reported, and, if so, to list the regulator and the applicant's registration number in Schedule D. The addition of this last question clarifies that if there are additional registrations, the applicant must list all of them.

[1012] For example, as the Commission noted in the Proposal, 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 and 15 U.S.C. 78*o*–8(a). *See* Proposal, 76 FR 841, note 178.

[1013] *See* 15 U.S.C. 78*o*–4(c)(7)(A)(iii) (providing that examinations of municipal advisors shall be conducted by the Commission or its designee).

[1014] Rule 15Ba1–1(*l*) defines 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.

[1015] *See, e.g., supra* note 979 and accompanying text and text following note 987.

[1016] The Commission believes that identification of the applicant's principal Web site out of possibly many will increase the benefit of the information to regulators, municipal entities, and investors without adding any unreasonable burden on the applicant.

information for only one person (*i.e.,* either a Chief Compliance Officer or another contact person). The intent of the Proposal was for the applicant to provide one or the other, and the form, as adopted, makes this clearer. The added note also advises, however, that information for both may be provided if the applicant so chooses. As discussed in the Proposal, the Commission is requesting the identifying and contact information in Item 1–G and/or 1–H to assist the Commission and the staff in evaluating applications for registration and overseeing registered municipal advisors.[1017]

As proposed and adopted, Item 1–I of Form MA requires the applicant further 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(s).

Item 1–J of Form MA, as proposed and adopted, requires an applicant to answer whether it is registered with any foreign financial regulatory authority,[1018] and, if so, to provide the name (on Schedule D) of each such authority and the country. Item 1–J is being adopted as proposed, with the additional requirement to provide the applicant's registration number under the foreign authority.[1019]

Item 1–K, as proposed and adopted, requires an applicant to disclose whether it is affiliated with any other business entity, and, if so, to disclose on Schedule D the name and registration number of each such affiliate.[1020] As discussed in the Proposal, this information will help inform the Commission as to the structure of the municipal advisor's business, which will help staff prepare for examinations of the municipal advisor.[1021]

Item 2: Form of Organization

The Commission proposed Item 2 of Form MA to require information about a municipal advisor's form of organization. The Commission received no comments regarding Item 2 and is adopting this item substantially as proposed. Item 2 requires 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 form of organization that the municipal advisor must specify; the month of its annual fiscal year end; the date on which it was organized; and the state or other U.S. jurisdiction [1022] or foreign jurisdiction where it was organized. As discussed in the Proposal, this information will assist the Commission in evaluating the applications for registration and overseeing registered municipal advisors.[1023]

Item 2 also requires an applicant to specify whether it is a public reporting company under Section 12 or 15(d) of the Exchange Act and, if so, to provide its Commission-assigned EDGAR CIK number. As discussed in the Proposal, the information that an applicant is a public reporting company will provide a signal that additional public information is available about the municipal advisor and/or its control persons.[1024]

Item 3: Successions

The Commission proposed Item 3 of Form MA to require applicants to disclose whether they are succeeding to the business of a registered municipal advisor and, if so, the date of succession. Further, Item 3 requires, on Schedule D, the name of, and registration information for, the firm the applicants are succeeding.[1025] The Commission received no comments regarding Item 3 and is adopting this item as proposed. As discussed in the Proposal, this information will 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.[1026]

Item 4: Information About Applicant's Business

The Commission proposed Item 4 to require certain information about the applicant's business. The Commission received several comments relating to Item 4, which are discussed below.[1027] The Commission is adopting Item 4 substantially as proposed, with certain modifications as discussed in the description of the item below.

As proposed and adopted, subparts A to C of Item 4 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, and approximately how many are registered representatives of a broker-dealer or investment adviser representatives.

Item 4–D, as proposed and adopted, requires an applicant to state approximately how many firms, or other persons (that are not employees or otherwise associated persons of the applicant) solicit municipal advisory clients on the applicant's behalf. As proposed, an applicant is required to disclose on Schedule D the names, addresses, and phone numbers of firms that solicit on its behalf. As adopted, Item 4–D additionally requires the applicant to disclose on Schedule D the same information for other persons who are not employed by, or otherwise associated persons of, the applicant but who solicit on its behalf.[1028] In addition, to make the information more useful, the Commission has determined to require an applicant also to provide the EDGAR CIK and/or individual CRD Number, if any, of the soliciting firm or other person.

Further, Item 4–E, as proposed, required an applicant to state whether it has any employees that also do business independently on the applicant's behalf as affiliates of the applicant and, if so, to disclose in related Section 4–E of Schedule D the names of such employees.[1029] In the form, as adopted,

[1017] *See also* Proposal, 76 FR 841.

[1018] An added instruction in Item 1–J, as adopted, makes clear that an applicant should answer ''No'' to this question even if it is affiliated with a business that is registered with a foreign financial regulatory authority.

[1019] Schedule D relating to Item 1–J, as adopted, clarifies that both the name of the country and the name of the authority must be provided in English, which may not have been evident in the proposed version. In general, throughout the forms, as adopted, when the name of a foreign country and/or authority is required, the filer is instructed that answers must be provided in English.

[1020] The text of Item 1–K has been revised to make explicit that ''business entity'' refers to any domestic or foreign entity. Similarly, the related questions in Schedule D, which, as proposed, asked only for ''any federal or state registration'' has been revised to include foreign registrations, as well. These revisions have been made in accordance with the description of this disclosure item in the Proposal, which included foreign affiliates among the required disclosures. *See* Proposal, 76 FR 842.

[1021] *See id.*

[1022] Proposed Item 2 did not specifically mention U.S. jurisdictions other than states. The Item, as adopted, makes clear that such jurisdictions are included. *See supra* note 1010 and accompanying text.

[1023] *See* Proposal, 76 FR 842.

[1024] *See id.*

[1025] As discussed elsewhere in this release, depending on whether the succession is a result of a merger or acquisition, or a reorganization, the succeeding firm will be able to register by either submitting a new Form MA or amending the Form MA of its predecessor. *See infra* note 1318 and accompanying text and *infra* Section III.A.7. (discussing Rule 15Ba1–7 regarding registration of a successor to a municipal advisor).

[1026] *See id. See also* Proposal, 76 FR 842.

[1027] *See infra* notes 1040–1046 and accompanying text.

[1028] Upon review of the form as proposed, the Commission determined that requiring a firm to list the names of all persons who solicit on its behalf will provide potentially valuable and more fulsome information, as it may yield the names of persons who are providing such services without themselves registering.

[1029] This category of employee includes persons who do not necessarily engage in municipal

Section 4–E of Schedule D requires the applicant, in addition, to provide the address, telephone and fax number, EDGAR CIK (if any) and individual CRD Number (if any) of each such employee.[1030]

Item 4–F, as proposed and adopted, requires the applicant also to approximate the number of clients it served in the context of its 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 previously who are obligated persons, or other types of entities (and specify which other types of entities); or whether the applicant engages only in solicitation and does not serve clients in the context of its municipal advisory activities.

As proposed and adopted, applicants also are required, in Item 4–G,[1031] 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 solicits in addition to serving them in the context of its municipal advisory activities. However, Item 4–G, as adopted, requires the applicant to provide the numbers separately for municipal entities and obligated persons.[1032]

Further, as proposed and adopted, applicants must indicate, in Item 4–H,[1033] whether they solicit public pension funds, 529 Savings Plans, local or state government investment pools, hospitals, colleges, or other types of municipal entities or obligated persons (and to specify which other types). Alternatively, an applicant is able to indicate that the question is inapplicable, because it serves only clients and does not engage in solicitation in the context of its municipal advisory activities.

As proposed and adopted, applicants are also required to disclose, in Item 4–I,[1034] whether they are compensated for their advice to or on behalf of municipal entities or obligated persons by hourly charges, fixed fees (not contingent on the success of solicitations), contingent fees, subscription fees (for a newsletter or other publications), or otherwise.[1035] If the applicant checks ''other,'' the other kind of arrangement must be described. Item 4–J,[1036] as proposed and adopted, asks for similar information about compensation for solicitation activities. Item 4–K,[1037] as proposed and adopted, asks whether the applicant receives compensation, in the context of its municipal advisory activities, from anyone other than clients, and, if so, to provide an explanation.

As discussed in the Proposal, disclosure of information relating to the number of a municipal advisor's employees and compensation arrangements will provide the Commission with a clearer understanding of the business structure of registered municipal advisors, including the size of each advisor, 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 will identify possible conflicts of interest that the municipal advisor may have with its clients.[1038]

The Commission received several comments regarding the five categories of compensation arrangements.[1039] One commenter believed that the Commission should ''refrain from utilizing this limited information in making a determination as to the existence of conflicts of interest with respect to compensation'' and that ''a more comprehensive analysis of compensation arrangements and the rationale for such fees should be considered prior to making any determination as to the appropriateness of a particular fee arrangement.'' [1040] Another commenter believed that, because investment advisers generally have ''a completely different business model, approach to business and compensation model,'' as well as ''scale of business,'' than municipal advisors, Form ADV is ''not a good model in this element of registration.'' [1041]

The five choices from among which applicants are asked to select are not intended to give an exhaustive picture of a municipal advisor's business model, but the Commission does believe that receiving responses regarding compensation, at least on the level of specificity requested in this item, will enable Commission staff to ask more targeted questions on routine examinations and may highlight relationships that should be more closely examined. Furthermore, the Commission notes that in addition to the five choices, an applicant may also check ''Other'' to describe its compensation arrangements. If selected, the applicant is required to specify the nature of such arrangements.

Item 4–L,[1042] as proposed and adopted, also requires the municipal advisor to indicate the general types of municipal advisory activities in which it engages.[1043] The Commission

advisory activities on behalf of the firm, and for whom a Form MA–I would thus not be required. Regarding employees who do also engage in municipal advisory activities on behalf of the firm, the applicant must in any case obtain the information requested in Section 4–E, as adopted, to complete a Form MA–I for each such employee. *See also infra* note 1030.

[1030] The Commission believes that these additional details in Schedule D will further serve the purposes for which Item 4 is designed and that an applicant firm should be able to provide such information about employees that do business on its behalf. Item 4–E, as adopted, asks the applicant to state the number of employees of this kind. This does not require an applicant to search for any additional information, because each such employee must be named in Schedule D. However, it can serve as a helpful cross-check to the filer as well as to regulators, and is also a useful number for interested parties who do not need the additional details.

[1031] The section of Item 4 that relates to solicitations of municipal entities and obligated persons has been restructured in Form MA, as adopted, into two parts. Item 4–G is the first part of Item 4–G as proposed, which requires the applicant to state the number of municipal entities and obligated persons that the applicant solicited on behalf of a third party, as described above. New Item 4–H is comprised of the questions regarding the types of persons solicited by the applicant that constituted the rest of Item 4–G as proposed. Hereinafter, subparts 4–H, I, J, and K of the Proposal will be referred to by their numbers in the adopted form, *i.e.,* 4–I, J, K, and L, respectively.

[1032] The Commission believes that the information requested will be more useful for regulatory purposes, and for gaining an understanding of municipal advisory activities in general, when broken down in this manner. Municipal entities and other interested parties can also benefit from this breakdown in assessing the specific experience of a municipal advisor.

[1033] Item 4–H was a part of Item 4–G as proposed. *See supra* note 1031.

[1034] Item 4–I was Item 4–H as proposed. *See supra* note 1031.

[1035] An applicant may alternatively state that the question is inapplicable because the applicant engages only in solicitation.

[1036] Item 4–J was Item 4–I as proposed. *See supra* note 1031.

[1037] Item 4–K was Item 4–J as proposed. *See supra* note 1031.

[1038] *See* Proposal, 76 FR 843.

[1039] *See* Joy Howard WM Financial Strategies Letter; Public FA Letter; and Fiscal Advisors and Marketing Letter, Inc., dated February 21, 2011 (''Fiscal Advisors and Marketing Letter'').

[1040] *See* Joy Howard WM Financial Strategies Letter.

[1041] *See* Public FA Letter. Another commenter stated that most municipal advisors ''charge on a project or transaction specific basis and not on an annual all encompassing service basis'' and thus believed that Form ADV is not a relevant document that would help in understanding ''the nature of an 'Independent Municipal Advisor,' its corporate makeup, nor the fee relationship'' and ''does not afford any basis for analyzing potential conflict of interest.'' *See* Fiscal Advisors and Marketing Letter.

[1042] Item 4–L was Item 4–K as proposed. *See supra* note 1031.

[1043] The following eleven activities are listed: (1) Advice concerning the issuance of municipal

Continued

understands that the listed activities are those in which the municipal advisors engage and are derived from the definition of municipal advisor in Exchange Act Section 15B(e)(4) [1044] or closely related to the activities included within that definition. As discussed in the Proposal, this information will help the Commission understand the scope of activities in which a municipal advisor engages and identify possible conflicts of interest and in preparing for examinations, and will also provide the Commission with data useful to making regulatory policy.[1045]

One commenter believed that, due to competitive concerns, a municipal advisor should not be required to disclose the names and contact information of persons that solicit municipal clients on its behalf.[1046] The Commission notes that the definition of municipal advisor under the Exchange Act includes, specifically, persons who undertake solicitation of municipal entities and obligated persons. The Commission thus believes that requiring an applicant to provide information about persons who solicit clients on its behalf will help it carry out its oversight responsibilities with respect to the full range of persons who are municipal advisors. For example, as already stated,[1047] such information may yield the names of persons who are engaged in such activities without themselves registering. Moreover, as stated in the Proposal, the Commission believes that information requested in Item 4–L is important for discerning possible conflicts of interest.[1048] The Commission further notes that the requirement that a municipal advisor disclose all persons who solicit clients on its behalf applies equally to all applicants for registration. The Commission believes that such universal disclosure serves to mitigate the competitive concerns raised by the commenter.

Item 5: Other Business Activities

The Commission proposed Item 5 to require information about the applicant's other business activities. The Commission received no comments regarding Item 5 and is adopting Item 5 substantially as proposed, with minor modifications as discussed below.

As proposed and adopted, Item 5 requires applicants to indicate whether they are actively engaged any one of an enumerated list of businesses.[1049] In Item 5, as adopted, the applicant is required additionally to indicate, for each other business in which it is engaged, whether this is its primary business.[1050] As proposed and adopted, Item 5 requires an applicant also to state whether it is actively engaged in any other business that is not one of those enumerated above and whether that other business is its primary business. It also is required to describe the other business on Schedule D to Form MA. As discussed in the Proposal, this information will assist the Commission, among other things, in identifying conflicts of interest for municipal advisors and preparing for inspections and examinations of municipal advisors. The information also will assist the Commission and the MSRB in understanding municipal advisors in the context of their activities for regulatory purposes.[1051]

Item 6: Financial Industry and Other Activities of Associated Persons [1052]

The Commission proposed Item 6 to require an applicant to disclose financial industry affiliations of its associated persons. The Commission received several comments on Item 6, as discussed below.[1053] The Commission has carefully considered these comments and is adopting Item 6 and the related information it requires on Schedule D of Form MA largely as proposed. Some modifications have been made, however, and these are discussed below.

Item 6, as proposed and adopted, requires an applicant to provide information about its associated persons [1054] that are engaged in

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. Applicants who check ''other'' activities will be required to provide a narrative description of such activities.

[1044] *See* 15 U.S.C. 78*o*–4(e)(4).

[1045] *See* Proposal, 76 FR 843.

[1046] *See* SIFMA Letter I.

[1047] *See supra* note 1028.

[1048] *See supra* note 1038 and accompanying text.

[1049] Specifically, in Item 5, as adopted, an applicant is asked whether it is actively engaged in business in, or 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, (7) major security-based swap participant, (8) swap dealer, (9) security-based swap dealer, (10) trust company, (11) real estate broker, dealer, or agent, (12) insurance company, broker, or agent, (13) banking or thrift institution (including a separately identifiable department or division of a bank), (14) investment adviser (including financial planners), (15) attorney or law firm, (16) accountant or accounting firm, (17) engineer or engineering firm, or (18) other financial product advisor (and, if so, to specify the type). Minor differences in this multiple choice list from the list, as proposed, are that engineer is now included, in addition to engineering firm (as in Item 6 as proposed and adopted), and swap dealer and security-based swap dealer are now two distinct categories.

[1050] Although this specific question was not included in the proposed form, the Commission notes that in the next subpart of Item 5, as proposed, if the applicant identifies any other businesses in which it is engaged that are not included in the list of choices described above, it is further asked whether this is its primary business. *See infra* note 1051.

[1051] *See* Proposal, 76 FR 844.

[1052] The title of Item 6, which, as proposed, was ''Financial Industry Affiliations of Associated Persons,'' has been changed in Form MA as adopted to better reflect the range of activities that the item concerns—all of which may be a source of conflict of interest for the municipal advisor—and to avoid any possible confusion that could be caused by the use of the term ''affiliations'' in the title.

[1053] *See infra* notes 1064–1070.

[1054] 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. 78*o*–4(e)(7). For purposes of Form MA, the Glossary defines ''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. 78*o*–4(e)(7)), but to exclude employees that are solely clerical or administrative. Specifically, the Glossary defines these terms to mean: ''Any partner, officer, director, or branch manager of a municipal advisor (or any person occupying a similar status or performing similar functions); any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any

activities other than those that relate to their association with the applicant. As discussed in the Proposal, Item 6 lists twenty activities that an associated person may engage in, some of which are not listed in Item 5 as other activities in which the applicant itself may be engaged.[1055] The collection of this information is designed to gather more complete information about the associated persons of a municipal advisor who are actually providing advice or are controlling the firm and help better inform the Commission's regulatory and examination programs.[1056]

As proposed, Item 6 of Form MA required an applicant to list, on related Section 6 of Schedule D of the form, all associated persons, including foreign affiliates, that are broker-dealers, municipal securities dealers, or government securities brokers or dealers, or investment advisers, municipal advisors, registered swap dealers, banking or thrift institutions, or trust companies. As adopted, the form requires the applicant also to list in Section 6 of Schedule D all associated persons that are investment companies (including mutual funds), major swap participants and major security-based swap participants, commodity pool operators, commodity trading advisors, futures commission merchants, accountants or accounting firms, attorneys or law firms, insurance companies or agencies, pension consultants, real estate brokers or dealers, sponsors or syndicators of limited partnerships, or engineers or engineering firms.[1057]

Section 6 of Schedule D, as proposed and adopted, also requires the applicant to provide the legal and primary business names of each associated person listed, as well as to indicate the category or categories listed in Item 6 of the main form of which the associated person is a member. Finally, Section 6 of Schedule D, as proposed and adopted, requires the applicant to indicate whether it controls, or is controlled by, the associated person; whether the two are under common control;[1058] and/or whether the associated person is registered with a foreign financial regulatory authority and, if so, the country and name in English of that authority.[1059]

As discussed above, the purpose of Item 6 is to elicit more complete information about who is providing advice or controlling the applicant. Moreover, as new Rule 15Bc4–1 underscores, all associated persons of municipal advisors are subject to censure.[1060] Thus, after further consideration, the Commission believes that requiring the applicant municipal advisory firm to identify associated persons that are involved in any of the above categories—each of which involves activities that can impact or be impacted by the advice the firm provides—will better assist the Commission in gaining an understanding of possible conflicts of interest or wrongful influence in the municipal advisor's activities. The Commission notes that Form MA elsewhere already reflects a concern that involvement in a wider range of areas can lead to conflict of interest, as Item 5 of the form requires disclosure of whether the applicant firm itself is involved in any of 17 enumerated categories of that Item and must further indicate whether it acts as any other type of financial product advisor and specify the type.[1061]

As already noted,[1062] in conformance with the additions to the categories of associated persons that must be identified in Item 6, Section 6 of Schedule D, as adopted, will require disclosure of foreign registration information with respect to associated persons in twenty categories. As discussed above, the Commission believes that an associated person's involvement in any of these categories can impact or be impacted by the advice the firm provides, and foreign financial regulatory authorities can be of significant help in tracking such activity and uncovering possible wrongdoing. An additional change in Section 6 of Schedule D, as adopted, requires the applicant to provide, in the case of an associated person registered with a foreign financial regulatory authority, the relevant registration number. The Commission believes that, for associated persons that are active in foreign countries, having the registration number, if any, under foreign financial regulatory authorities can be particularly helpful in obtaining information for regulatory and investigative purposes.

The Commission received several comment letters opposing the extent of the disclosures required by Item 6 and, on a more general level, all the disclosures that Form MA requires regarding an applicant's associated persons.[1063] One commenter believed that the form requires ''overly extensive disclosure'' regarding affiliates of a municipal advisor, particularly for a municipal advisor that is a member of a large affiliated group of institutions.[1064] These requirements, the commenter said, would impose ''a vast information-gathering burden on applicants.'' [1065] The commenter raised specifically the case of affiliates that are under common control with a municipal advisor (''sister affiliates''), whose activities ''may have no connection to municipal advisory activities, let alone, in the case of financial institutions with global operations, a nexus or connection to 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 (other than employees who are performing solely clerical, administrative, support or other similar functions); and any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.''

[1055] Specifically, under Item 6, a municipal advisor is required to disclose whether any of its associated persons is: (1) A broker-dealer, municipal securities dealer, or government securities broker or dealer; (2) an investment company (including a mutual fund), (3) an investment adviser (including a financial planner), (4) a swap dealer, (5) a security-based swap dealer, (6) a major swap participant, (7) a major security-based swap participant, (8) a commodity pool operator (whether registered or exempt from registration), (9) a commodity trading advisor (whether registered or exempt from registration), (10) a futures commission merchant, (11) a banking or thrift institution, (12) a trust company, (13) an accountant or accounting firm, (14) an attorney or law firm, (15) an insurance company or agency, (16) a pension consultant, (17) a real estate broker or dealer, (18) a sponsor or syndicator of limited partnerships, (19) an engineer or engineering firm, or (20) another municipal advisor. *See supra* note 1049. As adopted, Item 6 includes an instruction that if an associated person is involved in more than one of these activities, each such activity must be reported.

[1056] *See* Proposal, 76 FR 844.

[1057] In other words, the form, as adopted, requires the applicant to list in Section 6 of Schedule D the names of all associated persons in any of the categories in Item 6. *See supra* note 1055 and accompanying text.

[1058] *See infra* note 1080 for the definition of ''control'' as used in the municipal advisor registration forms.

[1059] To the extent that Item 6, as adopted, requires associated persons in additional categories to be listed in Schedule D, as discussed *supra* note 1057, the requirements to provide in Schedule D the legal and primary business names of each associated person, indicate the category or categories to which the person belongs, and respond to the questions relating to control now apply to persons in those additional categories. Similarly, the questions relating to registration with foreign financial regulatory authorities, as discussed further below, apply to associated persons in all the categories listed in Item 6, as adopted.

[1060] *See infra* Section III.A.9.

[1061] Item 6, as adopted, also asks the applicant to state the total number of its associated persons that belong to any of the twenty categories (listed above in note 1055). Because, in Item 6, as adopted, all such persons must be identified in Schedule D, tallying the number involves no additional disclosure and will act as a cross-check to ensure that the information provided is complete.

[1062] *See supra* note 1059.

[1063] *See, e.g.,* Acacia Financial Group Letter; Deloitte Letter; SIFMA Letter I.

[1064] SIFMA Letter I.

[1065] *Id.*

activities in the United States.'' [1066] The commenter suggested that disclosures regarding affiliates be limited to affiliates that control or are controlled by the municipal advisor or ''at a minimum'' to sister affiliates providing municipal advisory services in the U.S.[1067] This commenter also believed that a municipal advisory firm should not be required to provide information regarding its individual associated persons (citing the example of employees) on Form MA unless those persons ''devote a significant amount of time or resources'' to, or are ''primarily engaged'' in, municipal advisory activities, particularly if those persons are already registered with a broker-dealer, investment adviser, municipal securities dealer, commodity trading advisor or swap dealer.[1068]

Another commenter believed that requiring disclosures regarding associated persons performing ''any activities'' relating to advice could ''impose significant costs'' and ''create a significant burden.'' [1069] This commenter stated that the Commission should ''establish a threshold for reporting and updating associated person information in Form MA''—a certain minimum of hours spent on municipal advisory activities over a specified time period. The commenter also suggested that, when personnel from an entity are subcontracted, the entity itself should not be required to register.[1070]

The Commission notes that, for certain information pertaining to affiliates, it has determined to limit the required disclosures in Form MA to information regarding persons that control, or are controlled by, the municipal advisor (and not persons under common control).[1071] However, with respect to financial industry and other activities represented on the list in Item 6, the Commission believes it is appropriate to extend its information base regarding such activities to all of a municipal advisor's associated persons (which, by definition, includes persons under common control with the municipal advisor).[1072] For example, the Commission believes that ascertaining such information may assist the Commission in identifying potential conflicts of interest.

The ability to discern connections within a large network of affiliations and other associations that otherwise would not be evident is particularly important to the Commission for purposes of enforcement, to enable regulators to detect possible trails of influence and to widen their potential sources of factual information relevant to investigations of wrongdoing. The Commission believes that establishing such an information base is consistent with the Dodd-Frank Act's amendments to Section 15B of the Act, which explicitly extend the Commission's regulatory authority (directly and through its oversight of the MSRB) to associated persons of municipal advisors.[1073]

The Commission notes that Item 6 and Section 6 of Schedule D ask for little more than the names (legal and business) of any associated persons of the municipal advisor that do business in the specified fields and, if the associated person is registered with a foreign financial regulatory authority, the registration number. Otherwise, Section 6 asks only whether the municipal advisor controls or is controlled by the associated person or whether the two are under common control. Such control relationships are directly relevant to investigations of the municipal advisor.

The Commission believes that, in today's world of organizational and managerial sophistication and advanced information technology, including as is pertinent to cross-border affiliations, it should not be unreasonably difficult for a municipal advisor that finds itself within a larger family of affiliates, particularly of the size discussed by commenters, to obtain knowledge of its own place and the place of others within that family. Given the potential relevance and importance of such information, as discussed above, to assuring lawfulness and fairness in the field of municipal advisory services, as well as in maintaining confidence in the municipal securities markets, the Commission believes it is appropriate to require municipal advisors to obtain and provide such information.

With respect to the suggestions that a municipal advisory firm should not be required to provide information regarding its individual associated persons unless those persons devote a certain threshold of time or resources to municipal advisory activities, the Commission disagrees. In particular, the kind of activity that disclosure relating to associated persons is intended to bring to light may involve the kind of significant influence that often is wielded in very short timeframes of activity, *e.g.,* a short phone call from a partner in the firm to a key person in a municipal entity ''urging'' the issuance of a particular offering, or soliciting the municipal entity's investment.

Item 7: Participation or Interest in Municipal Advisory Client or Solicitee Transactions [1074]

The Commission proposed Item 7 to require information about an applicant's participation and interest in the transactions of its municipal advisory clients. The Commission received no comments referencing Item 7 that are not discussed elsewhere [1075] and is adopting Item 7 as proposed.[1076]

As discussed in the Proposal, 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 and/or the persons the municipal advisor solicits.[1077] 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

[1066] *Id.*

[1067] *Id. See also infra* notes 1119–1120 (related SIFMA comments regarding disclosure requirements with respect to the disciplinary history of affiliates and associated persons).

[1068] *See* SIFMA Letter I.

[1069] *See* Deloitte Letter.

[1070] *See id.*

[1071] *See also* the discussion below regarding Item 8, *infra* notes 1079–1088 and accompanying text.

[1072] *See* Section 15B(e)(7)(C) of the Exchange Act, which defines the term ''person associated with a municipal advisor'' or ''associated person of an advisor'' as including ''any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.''

[1073] *See, e.g.,* Section 15B(c)(4) of the Exchange Act (authority of Commission to censure or place limitations on the activities or functions of associated persons of municipal advisors); and Section 15B(b)(2)(A) (authority of MSRB to establish standards of training, experience, competence, and other qualifications for associated persons of municipal advisors). *See also* Section 15B(a)(2) (application for registration as a municipal advisor to contain such information and documents concerning associated persons of municipal advisors as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors).

[1074] The title of Item 7 has been revised in Form MA, as adopted, to include ''solicitee'' transactions to better reflect the information sought in this item. The term ''solicitee'' is defined in the discussion below and is included in the Glossary of Terms for the Form MA series as adopted.

[1075] As discussed above, the Commission received a general comment questioning whether useful information could be elicited from applicants with regard to some required disclosures. *See supra* note 984 and accompanying discussion.

[1076] The Commission notes that, as published in the Proposal, several of the questions in this item referred explicitly only to clients of the municipal advisor. It is clear from the context, however, that these questions were also intended to apply to persons that the municipal advisor solicits or intends to solicit in the context of its municipal advisory activities. Item 7, as adopted, has been modified to explicitly reference such solicitees in addition to clients in each of these instances.

[1077] *See* Proposal, 76 FR 844.

receive rather than on the client's best interests.

Specifically, Item 7 requires an applicant to disclose whether it, or any of its associated persons, has a proprietary interest in the securities or other investment or derivative product transactions of its clients or of persons whom it solicited or intends to solicit (''solicitees''). These disclosures include whether the applicant buys securities or other investment or derivative products from, or sells them to, its clients or solicitees; whether it buys or sells for itself securities (other than shares of mutual funds) or other investment or derivative products that it also recommends to such clients or solicitees; whether it enters into derivative contracts with such clients or solicitees; or whether it recommends to its clients or solicitees securities or other investment or derivative products in which it or any associated person has any proprietary interest (other than as already disclosed in response to the previous questions).

An applicant is also asked to disclose whether it or its associated persons recommend purchases of securities or derivative products to clients or solicitees for which the municipal advisor or its associated persons serve as underwriter, general or managing partner, or purchaser representative; recommend purchases or sales of securities or derivatives to clients or solicitees in which applicant or its associated person has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer); have certain discretionary authority over transactions in securities or other investment or derivative products for its clients or solicitees; and recommend brokers, dealers, or investment advisers to its clients or solicitees, and, if so, whether those brokers, dealers, or investment advisers are associated persons of the municipal advisor. Item 7 also requires the municipal advisor to disclose whether it or its associated persons give or receive compensation for municipal advisory client referrals.[1078]

Item 8: Owners, Officers, and Other Control Persons [1079]

The Commission proposed Item 8 of Form MA to require information about an applicant's control persons. As discussed below, the Commission received one comment specifically relating to Item 8. The Commission carefully considered issues raised by the commenter and is adopting Item 8 substantially as proposed, with minor modifications discussed below.

Item 8, as proposed and adopted, asks applicants to identify on Schedules A and B every person that owns a certain percentage of the applicant, that directly or indirectly controls the applicant, or that the applicant directly or indirectly controls.[1080] An initial applicant is required to complete Schedules A and B. Schedule C is used to amend information previously reported on Schedules A and B.

Schedule A requires information about the applicant's executive officers and, for firms, persons that directly own 5% or more of the applicant.[1081] Schedule B requests information about persons that indirectly own 25% or more of the applicant. A clarifying instruction has been added to Schedule B, as adopted, explaining that, for these purposes, an ''indirect owner'' includes any owner of 25% or more of any direct owner listed in Schedule A and any owner of 25% or more of each such indirect owner going up the chain of ownership. Applicants are also asked to identify, on Schedule D, any person that controls the applicant's management or policies if not otherwise identified as an owner or officer in Schedule A or B. Further information is requested with respect to control persons that are public reporting companies under Sections 12 or 15(d) of the Exchange Act.[1082]

For ease of use and clarity, Form MA, as adopted, asks for information separately on Schedules A–1 and B–1 for owners and control persons that are business entities and on Schedules A–2 and B–2 for owners and control persons who are natural persons, as well as (in Schedule A–2) for executive officers.[1083] The information sought in these schedules, however, is the same as in the Proposal, with minor modifications.[1084]

For each business entity listed, the applicant is required to provide its organization CRD Number, if it has one, or its IRS tax number, EIN, or, if not a domestic entity, any foreign business number. For each natural person listed, the applicant is required to provide the person's individual CRD Number, if any, or the person's social security number or foreign identity number, as well as date of birth.[1085]

As discussed in the Proposal, the information requested and the definition of control are consistent with that requested and used by the Commission in other contexts.[1086] This

[1078] In Item 7, as adopted, the phrase ''in the context of its municipal activities'' has been deleted in instances where the intention may not have been clear. For example, Item 7.C, as proposed, asked: ''Does applicant or any associated person have discretionary authority to determine the: (1) Securities or other investment or derivative products to be bought or sold for the account of a client that it serves or person that it has solicited or intends to solicit in the context of its municipal advisory activities.'' The phrase ''in the context of its municipal advisory activities'' was not intended to limit the question to products bought or sold in such context, but to limit the kind of solicitation being referenced. To avoid confusion, it has been deleted.

[1079] The title of this item as proposed was ''Control Persons.'' It has been changed in Form MA, as adopted, because the item, among other things, is seeking information about owners to determine whether such persons are control persons.

[1080] The term ''control'' is defined in the Glossary to mean, for purposes of the municipal advisor registration forms, ''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.

[1081] As detailed in the form, the 5% criterion varies in its applicability and does not always mean ownership in the ordinary sense of the word—depending on whether the applicant is a corporation, partnership, trust, or limited liability company.

[1082] Section 8–B of Schedule D to Form MA requires the name and CIK number of each control person listed on Schedule A, B, C or Section 8–A of Schedule D.

[1083] The guidance provided in the form has been correspondingly revised to reflect this restructuring. Although these Schedules, as published in print, display the information requested in table form, the electronic version of Form MA—which is the only format in which the form can be completed and submitted—asks the questions in a series of pop-up boxes and instructions. *See also supra* note 1001.

[1084] In the form, as adopted, in addition to providing information about other registrations that the control person that is a firm or organization may have with the Commission, information about any registration on Form MA–T must also be provided. In addition, the nature of the control must also be described. If the control person is a natural person, his or her CIK number, if any, must be supplied in addition to the other basic information requested.

[1085] As noted above, the form, as adopted, makes clear that social security numbers, foreign identification numbers, and date of birth will not be publicly disseminated.

[1086] The requested information and definition of ''control'' are consistent with the information requested of, and definition used for, investment advisers required to register on Form ADV. *See* 17

Continued

information will help to inform the Commission's understanding of the ownership structure of the municipal advisor and who ultimately controls the municipal advisor. Such information in turn will provide useful information in preparing for examinations and also in identifying potential conflicts of interest. The information requested also will inform the Commission about changes in control of the municipal advisor.

One commenter, as discussed above with respect to Item 6,[1087] cited Item 8 and Schedules A, B, C and D as another illustration of the burden imposed by the reach of Form MA's questions to information about affiliates. Although Item 8 refers to ''control persons,'' [1088] the Commission notes that the disclosure requirements in Item 8 apply only to ''every person that, directly or indirectly, controls the applicant, or that the applicant directly or indirectly controls'' and does not include sister affiliates (although a control relationship in other contexts is sometimes understood to include two persons under common control). The very point of registration is that, to be permitted to register as a municipal advisor, a firm must provide certain basic information that will enable the Commission to oversee the activities of, and exercise jurisdictional authority over, those who register. The Commission notes that Forms BD and ADV require filers to provide substantially similar information.

Item 9: Disclosure Information and Related DRPs

As discussed in the Proposal, Item 9 requires an applicant to provide certain information concerning any criminal, regulatory, and civil judicial actions relating to the applicant or any of its associated persons [1089] (collectively referred to hereinafter as ''disciplinary history'').[1090] If an applicant indicates in Item 9 that there has been a history of such actions involving itself or any of its associated persons, the applicant must report further information in the DRPs that comprise Part II of Form MA, which are described below.[1091] The Commission received several comments regarding the disclosures required by Item 9 and its related DRPs, which are discussed below.[1092] The Commission is adopting Item 9 with certain changes. Although, as adopted, Item 9 generally seeks the same information as in the Proposal, some questions have been more narrowly tailored and broken down into subparts. These changes and the reasons for them are detailed below.

As discussed in the Proposal,[1093] 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 of, or suspend for a period not exceeding twelve months, or revoke the registration of any municipal advisor, if it finds [1094] that such municipal advisor has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G) or (H) [1095] of paragraph (4) of Section 15(b) of the Exchange Act; has been convicted of any offense specified in Section 15(b)(4)(B) [1096] 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) [1097] of the Exchange Act.[1098]

Generally, Item 9 was designed to elicit information from a municipal advisor concerning certain of its activities or the activities of its associated persons that could subject the municipal advisor to disciplinary action by the Commission under these statutory provisions. The Commission intends to use this information to determine whether to approve an application for registration, to decide whether to institute proceedings to revoke registration, or to place limitations on an applicant's activities as a municipal advisor. In addition, the information will also identify potential problem areas on which to focus examinations.[1099]

In addition to its value for the Commission's oversight of municipal advisors, generally, as well as to inform MSRB rulemaking, the Commission seeks this information because it may indicate that a municipal advisor is statutorily disqualified from acting as a municipal advisor.[1100] Further, this information may be valuable to municipal entities and obligated persons who engage municipal advisors and to investors who may purchase securities from offerings in which municipal advisors have participated, as well as to other regulators.

The information to be disclosed is substantially similar to the information required to be disclosed in Form BD [1101] for broker-dealers and in Form ADV [1102] for investment advisers.[1103] In addition to information sought on Forms BD and ADV with respect to investment-related activities Form MA also requests parallel information with respect to municipal advisory activities.

The requested information is also generally consistent with the disclosure requirements of the temporary registration form, Form MA–T.[1104] However, as discussed in the Proposal, in Form MA–T, the Commission limited the disciplinary history disclosure requirements to ''associated municipal advisor professionals.'' [1105] As

CFR 279.1. *See also* Proposal, 76 FR 845, note 195 and accompanying text.

[1087] SIFMA Letter I, *supra* note 1065.

[1088] The definition of ''control'' does not refer to persons under common control. On the other hand, the definition of ''associated person'' of a municipal advisor does include a person that is under common control with the municipal advisor.

[1089] *See supra* note 1054 (discussing the definition of ''person associated with a municipal advisor'' or ''associated person of a municipal advisor'').

[1090] However, as discussed further below, the disclosures regarding criminal actions are limited to the period of the past ten years.

[1091] *See infra* note 1115 and accompanying text.

[1092] *See infra* notes 1119–1121 and accompanying text.

[1093] *See* Proposal, 76 FR 845.

[1094] 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. 78*o*–4(c)(2).

[1095] *See* 15 U.S.C. 78*o*(b)(4)(A), (D), (E), (G) and (H).

[1096] *See* 15 U.S.C. 78*o*(b)(4)(B).

[1097] *See* 15 U.S.C. 78*o*(b)(4)(C).

[1098] The Commission has the same authority with respect to municipal securities dealers. *See* 15 U.S.C. 78*o*–4(c).

[1099] *See infra* Section III.B. (discussing approval or denial of registration). *See also* Proposal, 76 FR 846, note 205 and accompanying text.

[1100] *See infra* Section III.B. and Proposal, 76 FR 846, note 206 and accompanying text. *See also* Section 15B(a)(2) of the Exchange Act, which directs the Commission to deny registration to an applicant municipal advisor if, among other things, it finds that if the applicant was registered, its registration would be subject to suspension or revocation.

[1101] *See* 17 CFR 249.501.

[1102] *See* 17 CFR 279.1.

[1103] *See* Proposal, 76 FR 846.

[1104] As discussed in the Proposal, in 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. *See* Proposal, 76 FR 846, note 209. On Form MA, the Commission is not including any time limitation on this disclosure, as discussed further below.

[1105] 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

explained in the Proposal, due to the short timeframe 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, which is limited to persons who are closely associated with an advisor's municipal advisory activities.[1106]

In connection with the permanent registration regime, however, the Commission believes it is appropriate to require in Item 9 that a municipal advisor disclose the disciplinary history, as applicable, of all its associated persons, as that term is defined in Exchange Act Section 15B(e)(7), with the exclusion of employees who perform solely clerical, administrative, support, or other similar functions.[1107] The Commission believes that, for purposes of the permanent registration regime, it is important to collect information about disciplinary matters for all such associated persons, because, under the Exchange Act, such matters may form the basis for an action to suspend or revoke a municipal advisor's registration.[1108]

Specifically, Item 9 as proposed and adopted requires disclosure of disciplinary history 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 will capture information with respect to employees that engage in municipal advisory activities, even if that is not their primary activity. Form MA, in contrast to temporary Form MA–T, also requires disclosure with respect to controlling persons and other affiliates of the municipal advisor.

As proposed and adopted, Item 9 asks whether the applicant or any associated person has, in the last ten years, been convicted of any felony, or pled guilty or nolo contendere to any charge of a felony in a domestic, foreign, or military court, or charged with any felony. Item 9 further asks whether the applicant or any associated person has been convicted of any misdemeanor or pled guilty or nolo contendere in a domestic, foreign, or military court to any charge of a misdemeanor in a case involving municipal advisor-related business,[1109] investments or an investment-related business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion or a conspiracy to commit any of these offenses, or charged with any misdemeanor of the type described above.[1110] With respect to charges alone, an applicant must respond only with respect to charges that are currently pending.

A clarification has been added in Item 9, as adopted, regarding the provision that disclosure of an event in the Criminal Action Disclosure section is not required if the date of the event was more than ten years ago. The applicant is instructed that, for purposes of calculating the ten-year period, the date of an event is the date that the final order, judgment, or decree was entered, or the date that any rights of appeal from preliminary orders, judgments, or decrees lapsed. This instruction provides a clear-cut guideline by requiring any past cases to be resolved with finality before the ten-year period of no criminal history can begin. The Commission notes that this defining line has been set forth explicitly in other contexts.[1111]

In the Regulatory Action disclosure section of Item 9, Form MA as proposed and adopted asks 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 also asks for similar information with respect to other federal regulatory agencies, any state regulatory agency, or any foreign financial regulatory authority.

Item 9 further asks 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 also asks whether the municipal advisor or its associated persons have had authorization to do business or to act as an attorney, accountant or federal contractor revoked or suspended.

The Civil Judicial Disclosure section of Item 9, as proposed, asks whether any domestic or foreign court has ever (a) enjoined the applicant or any associated person in connection with any municipal advisor-related or investment-related activity; (b) found that the applicant or any associated person was involved in a violation of any municipal advisor- or investment-related activity; or (c) dismissed a municipal advisor- or investment-related civil action brought against the applicant or an associated person by a state or foreign financial regulatory authority. Form MA, as adopted, retains the same questions, although the latter

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. *See also* Proposal, 76 FR 846, note 211 and accompanying text.

[1106] This includes those persons 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. *See* Temporary Registration Rule Release, 67 FR 54469. *See also* Proposal, 76 FR 846, note 212 and accompanying text.

[1107] *See supra* note 1054.

[1108] *See* Section 15B(c)(2) and (c)(4) of the Exchange Act and Rule 15Bc4–1 thereunder, discussed *infra* Section III.A.9. of this release, and Section 15(b)(4) of the Exchange Act. *See also* Proposal, 76 FR 847, note 217 and accompanying text.

[1109] The term ''municipal advisor-related'' is defined as ''[c]onduct that pertains to municipal advisory activities (including, but not limited to, acting as, or being an associated person of, a municipal advisor).'' *See* Glossary.

[1110] The disclosures relating to felonies, in Form MA as in Form BD, concern felonies of any kind, and are not limited to felonies relating to municipal advisor-related and investment-related business.

[1111] *See, e.g.,* Item 11 of Form ADV.

question has been revised to explicitly include actions brought by U.S. jurisdictions other than states.[1112]

As already indicated, the Criminal Action Disclosure section of Form MA as proposed and adopted requires disclosure of events that occurred within the last ten years.[1113] With respect to Regulatory and Civil Judicial Actions, the form as proposed and adopted places no time limit on how far back in time events must be disclosed. The applicability of these disclosure requirements to any event in the past is consistent with the disclosure reporting requirements on Form BD, adopted pursuant to Section 15(b)(1) of the Exchange Act,[1114] with one exception. In Form BD, the requirement to disclose any civil judicial injunctions is limited to the past ten years. In contrast, the Commission proposed its corresponding question in Form MA regarding past civil injunctions without limiting the disclosure requirement to the past ten years. The Commission received no comment on this disclosure requirement and is adopting it as proposed.

As mentioned above, Form MA includes three separate kinds of DRPs to report information, as relevant, relating to criminal, regulatory, and civil actions involving the municipal advisor or its associated persons reported in Item 9.[1115] The Commission is adopting each of these DRPs as proposed. Some modifications have been made, however, and these are discussed below.

Generally, each DRP requires detailed information about the reported action, such as the court where the charges were filed and when, a description of the charge and the circumstances relating to it (in the case of criminal actions); the authority that initiated the action and a description of the allegations and the product-type (in the case of regulatory actions); or the initiator of the court action, the relief sought, and the product type (in the case of civil judicial actions). Applicants are also required to indicate the status of the charge or action, including resolution details as appropriate. As discussed in the Proposal and consistent with the limitations set forth in Section 15(b)(4)(B)[1116] of the Exchange Act,[1117] however, information on the Criminal Action DRP is limited to matters within the last ten years.

The Commission believes that it is important to collect the information required by the DRPs in addition to the basic disclosures in Item 9 to further the aims described above regarding the information required in Item 9: to assist it in deciding whether to grant or institute proceedings to deny an application for registration or to revoke a registration; to manage the Commission's regulatory and examination programs; to make such information available to the MSRB; and to obtain information that can be of value to municipal entities engaging the services of municipal advisors and to investors who may purchase securities from offerings in which municipal advisors have participated, as well as to other regulators.[1118]

One commenter expressed concerns about the ''vast information-gathering burden on applicants'' imposed by Item 9.[1119] The commenter indicated that its concerns, which focused on the requirement to collect information regarding sister affiliates of a municipal advisor, applied ''particularly in the light of the required disciplinary history disclosures.''[1120] This commenter observed that Form ADV, upon which Form MA is based, does not require disclosure of a sister affiliate's disciplinary history. Another commenter stated that ''[s]ome entities, such as banks, broker-dealers and investment advisers, may have many branches, and branch managers, that have nothing to do with the entity's municipal advisory business'' and urged that Form MA be amended to require disciplinary history ''only with respect to branch managers of branches where a municipal advisory business is conducted.''[1121]

In considering these comments, the Commission notes that Section 15B of the Exchange Act assigns the Commission oversight and disciplinary responsibilities with respect to all associated persons of a municipal advisor, a category that includes sister affiliates and branches. Moreover, as discussed elsewhere in this release,[1122] the Commission is clarifying with new Rule 15Bc4–1 that associated persons of municipal advisors are subject to censure, limitations on their activities, suspension, or being barred from being associated. As explained above, with regard to the value of obtaining information regarding financial industry and related activities of associated persons, the Commission believes that the ability to discern connections within a large network of affiliations and other associations is important for investigations of wrongdoing. The ability to gain, through disclosure requirements, a base of knowledge that includes actions of past wrongdoing is all the more important for these purposes.

Regarding the comment concerning the burden of obtaining information about sister affiliates, the Commission notes that Form ADV, too, requests certain information regarding an investment adviser's sister affiliates—specifically, business information—as the commenter acknowledged. Moreover, as the commenter also acknowledged, Form ADV requests the disciplinary history of the investment adviser and all of its ''*advisory* affiliates'' (emphasis added)—*i.e.,* all current employees, all officers, partners or directors, and all persons directly or indirectly controlling or controlled by the investment adviser. Given that a municipal advisor is in any case required to gather certain facts about its sister affiliates' business activities, the Commission believes that it is appropriate to request the added information about any disciplinary history of these affiliates, particularly in view of its potential value to regulators for purposes of investigation and enforcement discussed above.

The DRPs associated with the disclosures in Item 9 are being adopted substantially as proposed. However, as discussed below, some additional disclosure requirements and other revisions have been included in the DRPs, as adopted.[1123]

[1112] The Commission notes that the question, as proposed, relates to actions in ''any domestic or foreign court.'' The Commission believes this phrase implicitly includes courts in U.S. jurisdictions other than states, but is making this explicit to clarify its intent. If an action was brought and dismissed in a U.S. jurisdiction other than a state or a foreign jurisdiction, the information requested is no less pertinent to regulators and investors.

[1113] As is the case with respect to brokers and dealers pursuant to Section 15(b)(4) of the Exchange Act (15 U.S.C. 78*o*(b)(4)), Section 15B(c)(2) of the Exchange Act (15 U.S.C. 78*o*–4(c)(2)), as amended by the Dodd-Frank Act, limits the Commission's ability to impose sanctions on municipal advisors for convictions of felonies and misdemeanors to convictions occurring within ten years preceding the filing of any application for registration.

[1114] *See* Proposal, 76 FR 846.

[1115] An applicant is required to complete a separate DRP of the relevant kind for each event or proceeding in which the applicant itself or any of its associated persons was involved, but the same event or proceeding may be reported for more than one person or entity using one DRP.

[1116] 15 U.S.C. 78*o*(b)(4)(B). *See also* 15 U.S.C. 78*o*–4(c)(2).

[1117] *See* Proposal, 76 FR 847.

[1118] *See* Proposal, 76 FR 847.

[1119] *See* SIFMA Letter I. *See also supra* notes 1065 and 1087.

[1120] *See* SIFMA Letter I.

[1121] *See* ABA Letter.

[1122] *See infra* Section III.A.9.

[1123] Many of the same or similar revisions have also been made to the DRPs of Form MA–I, including those other than the Criminal, Regulatory, and Civil Judicial Action DRPs of that form, and a discussion of all of them will not be repeated in the section on Form MA–I below.

Generally in all the DRPs, as proposed, when an amendment was filed seeking to remove a previously-filed DRP, the applicant was asked for the reason. Some, but not all of the DRPs, gave the option of checking a box indicating that the DRP was filed in error. Some, but not all of the DRPs, additionally asked for an explanation of the circumstances that gave rise to the error. For the sake of consistency and to provide regulators, municipal entities, and others with important detail, all the DRPs, as adopted, have been revised to include these elements. Also, in the Criminal Action DRP, an additional option is given to indicate why the DRP was filed an error. The new option is that the event or proceeding occurred more than ten years ago.[1124]

As proposed, if a DRP pertains to an associated person of the municipal advisor, the DRP asks whether that person is registered with the Commission. In the DRPs, as adopted, if the associated person is registered, the registration number must be provided.[1125] The Commission believes that, if an applicant for registration with the Commission has an associated person that is otherwise registered with the Commission, such information is valuable for cross-referencing and enforcement and other regulatory purposes and providing it should not constitute an undue burden.[1126]

Each DRP, as proposed, asked if the municipal advisor or associated person whom the DRP concerned was registered through the IARD or CRD system or the municipal advisor was previously registered on Form MA–T, whether the advisor or associated person previously filed a DRP (with Form ADV, BD, or U4) or the advisor filed disclosure on Form MA–T regarding the same event. The adopted version of each DRP now asks whether an accurate and up-to-date DRP containing the information regarding the applicant or associated person required by the DRP is already on file in the IARD or CRD system (with a Form ADV, BD, or U4) or in the SEC's EDGAR system (with a Form MA or Form MA–I), and, if so, to specify the type of filing and provide specific information regarding the name of the filer, the CRD Number (where relevant), the date, and disclosure or accession number of the relevant other form.[1127] As discussed above,[1128] the ability to incorporate by reference any required information about the disciplinary history of an applicant or associated person from a DRP that already has been filed relieves the regulatory burden on applicants who can do so. At the same time, however, sufficient information about where the information is filed is necessary for regulators, municipal entities, and investors to be able to access it with reasonable ease.

As proposed, some of the DRPs, where relevant, asked for the name of the federal, military, state or foreign court where a case was formally brought or appealed. In the DRPs, as adopted, an applicant is presented with a list of types of courts from which to choose and must specifically check the type of court in which the case was brought.[1129] In addition, ''international court'' and ''other'' have been added to the choices (and, if the latter is checked, the applicant must specify the type) and the street address and postal code of the court will now need to be provided in addition to the city or county and state or country. Requests for information in all the DRPs regarding courts and other panels have been made consistent to require the name of the case (in addition to the docket number, as proposed). The Commission believes that these additions will enable regulators, municipal entities, and investors to more easily locate information that may be relevant to them and, if need be, address further inquiries. The Commission further believes that complete responses to the questions in the DRPs, as proposed, would have supplied most of this same information.[1130]

For the same reason, similar changes have been introduced into the DRPs regarding regulatory adjudications and civil judicial actions. Where the proposed Regulatory Action DRP asked the filer to indicate whether a regulatory proceeding was initiated by the SEC, another federal authority, state, SRO, or foreign authority, the forms as adopted add, as choices, the CFTC, a federal banking agency, the National Credit Union Administration, or other regulator or authority that the applicant must specify. In addition, the applicant must now indicate, as applicable, the name of the administrative proceeding, commission or agency hearing, or other regulatory proceeding or forum in which the action was brought and the street address and postal code of the location where the case was heard. Specific choices added with respect to who initiated a Civil Judicial Action include the CFTC, another federal authority (which the applicant must specify), and a municipal advisory firm.

As proposed, not all the DRPs contained instructions to the applicant regarding the language to be used in naming or describing the charges brought in a foreign jurisdiction. As adopted, the forms consistently require the applicant to provide all the information requested in English. The Commission believes that this requirement is appropriate in an application for U.S. registration designed to obtain information on behalf of U.S. regulators, municipal entities, and investors.

As proposed, in the Criminal Action DRP, in a case where criminal charges were brought against a firm or organization over which the applicant or associated person had control, the applicant was required to indicate whether the firm or organization was engaged in a municipal advisor-related business. In the DRP, as adopted, the question has been revised to ask, in addition, whether the firm or organization was engaged in an investment-related business.[1131] Because of the close relationship between investment-related business and municipal advisory activities, the Commission believes that it is important for regulators, municipal entities, and

[1124] *See supra* note 1116 and accompanying text.

[1125] In all the DRPs, as adopted, if an applicant indicates that the DRP concerns one or more associated persons, the form asks how many. Because the names of all such associated persons must be identified in the DRP in any case, tallying the number involves no additional disclosure and will act as a cross-check to ensure that the information provided is complete.

[1126] On the other hand, the requirement to name the employer of an associated person when the activity occurred that led to an action has been eliminated.

[1127] The DRPs, as adopted, do not provide the option of indicating that the information is already on file in a Form MA–T, as Form MA–T does not require the disclosures required in the DRPs.

[1128] *See supra* note 995 and accompanying text.

[1129] In the electronic form, the applicant must make a selection and thus cannot avoid answering the question specifically.

[1130] As proposed, the DRP asked the applicant to describe details of the event in narrative form, and to, among other things, ''include charge(s)/charge Description(s), and for each charge provide: (1) Number of counts, (2) felony or misdemeanor, [and the] (3) plea for each charge'' and ''provide a brief summary of circumstances leading to the charge(s) as well as the disposition.'' The proposed version separately required the applicant to ''[i]nclude, for each charge, (a) Disposition Type (*e.g.,* convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc., (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.'' It also required an applicant to provide ''a brief summary of circumstances leading to the charge(s) as well as the disposition'' and to include ''the relevant dates when the conduct which was the subject of the charge(s) occurred.'' The Commission also notes that the Criminal Action DRP of Form MA–I, both as proposed and adopted, asks for information about amended or reduced criminal charges.

[1131] In the form, as proposed, the applicant would have been required to indicate only whether the firm or organization was in municipal advisor-related business.

investors in municipal securities to have this information.

The instructions in the Criminal Action DRP on how to report an event or proceeding have been revised in the form as adopted.[1132] No substantive changes have been introduced in the reporting requirements. The revisions have been made solely for purposes of clarity. The adopted version of the instructions states: ''Use this DRP to report all charges, including multiple counts of the same charge, arising out of the same event and filed in one criminal action. The same DRP may be used for more than one person with respect to the same event or proceeding. Separate criminal actions arising out of the same event, and unrelated criminal actions, must be reported on separate DRPs.'' The Commission believes that the revised instructions, which are similar to instructions that appear in the DRPs for Forms BD and ADV, will help assure that the disciplinary information provided in response can be easily understood.

An instruction has been added to the Criminal Action DRP advising applicants that applicable court documents must be attached to, and filed with, the DRP if not previously submitted.[1133]

In the Criminal Action DRP, as proposed, an applicant was not required specifically to indicate whether the original criminal charge was amended or reduced. As adopted, the DRP asks for this information and for the relevant date. The Commission believes that the clearer picture of the disciplinary history that will emerge when this information is supplied should assist regulators, municipal entities, and investors in assessing the credentials and background of the municipal advisor and its associated persons.

In the Criminal Action DRP, as proposed, an applicant was not required to state, if the case was on appeal, to whom it was appealed and the date of the appeal. As adopted, the DRP now requires these disclosures.[1134]

The Criminal Action DRP, as proposed, asked for information generally about the disposition of the relevant action, in narrative form, and to include details concerning any sentence or penalty imposed, its start date, and its duration, and the amount and date of payment.[1135] As adopted, the form requires the applicant to choose from among 16 types of disposition of a case (or to check ''other,'' and specify the other), and to further identify any other type of disposition. Choices are also provided to describe specifically the disposition of any appeal.[1136] The DRP, as adopted, further asks specifically whether any incarceration was imposed in connection with the action, and, if so, the duration, the start and end dates, and any concurrent sentences.[1137] It also asks, in question-by-question format, whether any portion of a monetary penalty was reduced or suspended, whether it has been paid in full, and, if not, how much remains unpaid. The Commission believes that these revisions will help ensure that the description of the disposition is complete.

As proposed, the Regulatory Action DRP required the applicant to check off any of 14 types of ''principal sanctions'' [1138] in the case (or to check ''other,'' and specify the other type), and to further identify any other sanctions. As adopted, the DRP does not differentiate between principal sanctions and any other kind of sanction, but adds more types to the list in addition to requiring the applicant to identify any others. This, too, will help ensure that the filer provides appropriate detail, thereby enabling interested parties to better assess the credentials and background of the applicant and its associated persons.

Similarly—and for the same reason—the Civil Judicial Action DRP no longer differentiates between ''principal relief'' sought and other relief, and provides a longer list of possible sanctions or relief sought from among which the applicant must select in addition to identifying any other sanctions or relief sought.

The questions in the Regulatory and Civil Judicial Action DRPs regarding how a case was resolved, like the questions in the Criminal Action DRP regarding disposition, have been revised in the DRPs, as adopted, to be more specific and to offer more choices from among which an applicant must select, for the same reason as in the Criminal Action DRP. The Commission believes that these revisions will help ensure that the description of the disposition is complete. More possible answers are provided from among which the applicant must choose to describe specifically the type of resolution that resulted (acceptance, waiver, and consent, settlement, dismissal, judgment rendered, etc.) and choices are now given regarding how any appeal was resolved.

Similarly, more choices are presented to describe any sanctions that were ordered in the relevant Regulatory or Civil Judicial Action.[1139] In addition, questions are broken out into separate sections regarding the details of three specific types of sanctions and/or conditions of sanctions: (a) Bars, injunctions, and suspensions; (b) requalifications (by examination, retraining, or other process); and (c) monetary sanctions.[1140]

[1132] In the Criminal Action DRP, as proposed, the applicant was instructed: ''Use a separate DRP for each event of proceeding. The same event or proceeding may be reported for more than one person or entity using one DRP . . . Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Use this DRP to report all charges arising out of the same event. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. One event may result in more than one affirmative answer to the [questions asked earlier in the DRP].''

[1133] This instruction, which was included in the proposed Criminal Action DRPs for Form MA–I, was not included in the proposed Criminal Action DRP for Form MA. The Commission notes that Form BD also requires applicable court documents to be attached to the Criminal Action DRP in that form.

[1134] The Commission notes that the Regulatory and Civil Judicial Action DRPs, when proposed, already required similar information regarding appeals.

[1135] *See supra* note 1130.

[1136] These choices are: affirmed; vacated and returned for further action; or vacated/final. An applicant may also respond ''other,'' in which case the other type of disposition must be specified.

[1137] The DRP, as adopted, also asks specifically whether any sentence or any other penalty is ordered, and, if so, to list each type, giving the examples of prison, jail, probation, community service, counseling, education, or other (which must be specified).

[1138] The DRP, as adopted, clarifies that the question refers to the sanctions sought.

[1139] For example, the choices in the Regulatory Action DRP, as proposed, were: monetary/fine; revocation/expulsion/denial; censure; disgorgement/restitution; cease and desist/injunction; bar; suspension; and other (which must be specified). The choices added in the adopted version include: civil and administrative penalties/fines; expulsion; prohibition; reprimand; rescission; requalification; revocation; and undertaking.

[1140] For example, in the Regulatory and Civil Judicial Action DRPs, as proposed, the applicant was asked broadly to describe, in narrative form: ''Sanction detail: if suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against the applicant or an associated person, date paid and if any portion of penalty was waived.''

By contrast, in the DRPs as adopted, similar information is requested in question-by-question format in each of the separate sections described above. Questions relating to bars, injunctions, and suspensions are further subdivided into a separate subsection for each, and the questions distinguish between temporary and permanent bars. The applicant is also instructed to report any additional details if one or more bars, injunctions, or suspensions were imposed with regard to different activities and the terms specify different time periods, and a similar instruction is included with regard to requalifications. Details similar to those specified in the Criminal Action DRP, as adopted, *see supra* notes 1135–1137 and accompanying text, are also requested.

As proposed, the Regulatory and Civil Judicial Action DRPs asked the applicant to provide a brief summary of details relating to the action's status with relevant terms, conditions, and dates. As adopted, the DRPs specifically ask whether any limitations or restrictions are in effect while the case is pending or on appeal, as applicable. For pending cases, the DRPs also ask for the date that notice or other process was served.[1141] Here, too, the Commission believes that specifying these details as required elements will serve to ensure that the applicant's description is complete.

The Civil Judicial Action DRP, as proposed, did not ask for the full name of the defendant or ask whether the applicant is a named defendant. As adopted, the DRP requires this information, and, if the applicant is not a named defendant, further requires a description of how the action involves the defendant. This information should help interested parties more easily determine the role of the applicant or associated person in the civil judicial action as part of their assessment of the applicant.

The DRPs, as adopted, now ask for various minor additional disclosures reflecting a level of detail generally similar to the disclosures discussed above, which the Commission believes should serve to enhance the usefulness of the information to regulators and the benefit it will have for municipal entities and the investing public without unreasonably burdening applicants for registration.[1142]

Item 10: Small Businesses

As described further in Section IX below, the Commission is required by the Regulatory Flexibility Act (''RFA'') [1143] 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. As discussed in the Proposal, 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.[1144] The Commission proposed to use the SBA's definition of small business to define municipal advisors that are small entities for purposes of the RFA.[1145] This definition will remain unchanged in the rules as adopted.

The Commission proposed Item 10 of Form MA to enable it to determine how many applicants meet the SBA's definition of ''small business'' or ''small organization'' as applied to municipal advisors. Thus, Item 10 requires each applicant to disclose whether it had annual receipts of less than $7 million during its most recent fiscal year (or during the time it has been in business, if it has not completed its first fiscal year in business). Item 10 also requires each applicant 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 during the time it has been in business, if it has not completed its first fiscal year in business).

The Commission received no comments on the information requested by Item 10 and is adopting this item as proposed.[1146]

Technical and Other Changes

In addition to the modifications discussed above, a number of non-substantive, technical and clarifying changes have been made to Form MA, its schedules and the DRPs as adopted.[1147] Further, some of the multi-pronged questions have been broken down into separate parts to make the form clearer and more user-friendly.[1148] The Commission has also made certain additional changes to correct inadvertent omissions in the form, as proposed.[1149]

Execution Page

Form MA includes an Execution Page that an authorized person of the municipal advisor filing the form is required to sign electronically before the form can be submitted.[1150] The Commission received no comments regarding the Execution Page, other than on the self-certification contained therein. For reasons discussed below, the Commission is removing the self-certification section of the Execution Page in Form MA but otherwise is adopting the Execution Page substantially as proposed.[1151]

An authorized person signs the form by typing his or her name and submitting the form on behalf of the municipal advisor. The authorized person is required to sign one of two different Execution Pages, depending on whether the municipal advisor is resident in the United States or a ''non-resident'' municipal advisor. In either case, by signing the Execution Page, the authorized person states that he or she is signing Form MA on behalf, and with the authority, of the municipal advisor and affirms that the information in Form MA is true and correct.

[1141] As previously mentioned, the DRPs, as proposed, already requested the date of any appeal. *See supra* text accompanying note 1134.

[1142] Some examples, when an applicant is asked to check the type of product involved in a case, more choices are included in the list of possibilities than in the proposed version. When the resolution of a case is an order, the applicant is asked whether it is a final order based on violations of any laws or regulations that prohibit fraudulent or deceptive conduct. Several changes were made so that if one or more DRPs asks a follow-up question when a certain response is given, other DRPs are consistent and ask the same follow-up question. Thus, each time an applicant selects more than one resolution of a case as having occurred or if the choice that the applicant has selected does not adequately summarize the resolution, the applicant must provide an explanation. Each time an applicant indicates that a relevant date provided is not exact, an explanation is required. *See also infra* note 1147. In addition, throughout the DRPs, instructions have been revised to offer more clarity on how to file a DRP or when a separate DRP must be filed regarding the same event. *See also supra* note 968.

[1143] 5 U.S.C. 601 *et seq.*

[1144] *See* 13 CFR 121.201. *See also* Proposal, 76 FR 848, note 222 and accompanying text.

[1145] *See* Proposal, 76 FR 848.

[1146] Several commenters did raise issues with respect to the impact that the new registration requirements could have, generally, on small businesses. *See, e.g., supra* note 986, and *see also supra* note 980. Such concerns are addressed in Section IX below.

[1147] For example, new guidance is included on Form MA, as adopted, that reminds applicants that they must supply supporting documents where applicable, and that Form MA–NR must be included for non-residents. Filers are also advised that false statements or omissions may result in administrative or civil actions, in addition to the other legal consequences mentioned in the Proposal. Instructions have been included regarding non-US telephone and fax numbers. References to U.S. state jurisdictions have been amended to consistently include other types of U.S. jurisdictions, and the choices on the forms, accordingly, include such jurisdictions by name. *See also supra* note 968.

[1148] For example, the questions in the DRPs regarding associated persons are divided into separate sections for firms and organizations, on the one hand, and natural persons on the other. Many of the questions now present applicants with a series of choices that they can check off. Some questions are renumbered, and some subsections have been given titles where there were none in the proposed version.

[1149] For example, the Criminal Action DRP requires that if the applicant is amending a previously filed DRP pertaining to an associated person because it was filed in error, the applicant is required to explain the circumstances. The Proposal inadvertently omitted a requirement to explain the circumstances when the error pertained to the applicant itself. The Regulatory and Civil Judicial Action DRPs as previously proposed and now adopted require an explanation in both cases.

[1150] *See* Proposal, 76 FR 849. As proposed, the Execution Page (except for the self-certification section) is similar in purpose to the Execution Page of Form ADV (*see* 17 CFR 279.1), but deletes references to state registration, bonding requirements and other inapplicable components, and will require a non-resident municipal advisor to execute a separate form (Form MA–NR) to designate agent for service of process. *See infra* Section III.A.6.

[1151] The description immediately below relates to the Execution Page as adopted. Discussion of the removal of the self-certification section follows.

The Execution Page for both resident and non-resident municipal advisors requires the signatory to certify that the books and records of the municipal advisor will be preserved and available for inspection and to authorize any person with custody of the books and records to make them available to federal representatives. On the Execution Page for non-resident municipal advisors, the signatory, in signing the form, also states that the municipal advisor agrees that it will provide to the Commission, at its own expense, copies of all books and records that the municipal advisor is required to maintain by law. As discussed in the Proposal, 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.[1152]

On the Execution Page for domestic municipal advisors, the signatory also states that it appoints certain officials as agents for service of process in the state where the advisor maintains its principal office or place of business. Specifically, a domestic municipal advisor appoints the Secretary of State or other legally designated officer in the state where it maintains its principal office and place of business. As discussed in the Proposal, this appointment allows private parties and the Commission to bring actions against the municipal advisor by delivering necessary papers to the appointed agent.[1153] The agent is 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. The agent also is able to receive service for investigation and administrative proceedings.

On the Execution Page for non-resident municipal advisors, the signatory on behalf of the registrant also states that an opinion of counsel is attached as an exhibit to Form MA and 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 inspection and examination by the Commission.[1154] As discussed in the Proposal, 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.[1155] Providing an opinion of counsel that a municipal advisor can provide access to its books and records and can be subject to inspection and examination allows the Commission to better evaluate a municipal advisor's ability to meet the requirements of registration and ongoing supervision.[1156] Failure to provide an opinion of counsel may be a basis for the Commission to deny an application for registration.[1157]

As proposed, Form MA required the authorized person of a municipal advisor completing the Execution Page to certify separately on behalf of the municipal advisor that it and every natural person associated with it had met, or within any applicable required timeframes would 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. Under the Proposal, the authorized person, on behalf of the municipal advisor also would have been required to certify that the municipal advisor had conducted an initial or annual review, as applicable, of the municipal advisor's business, and had reasonably determined that the municipal advisor: (a) could 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; [1158] (b) could comply with all applicable regulatory obligations; and (c) had met such regulatory obligations during the last year (or during such shorter period if the application was an initial application for registration). For these purposes, such applicable regulatory obligations were to include obligations under the federal securities laws and rules promulgated thereunder and applicable rules promulgated by the MSRB, or any other relevant SRO.

Under the Proposal, the authorized person also would have been required to certify that the municipal advisor had documented this review process and would maintain all documents relating to the review in accordance with Rule 15Ba1–7 under the Exchange Act.[1159] Such certification would have been required in conjunction with the filing of an initial application for registration as a municipal advisor and annually thereafter.[1160]

The Commission received one comment letter opposing the proposed self-certification requirement.[1161] The commenter provided that self-certification should not be required and noted that similar certifications are not

[1152] *See* Proposal, 76 FR 848.

[1153] *See id.* Appointment of agent for service of process for non-resident municipal advisors is discussed further below. *See infra* Section III.A.6 (discussing Form MA–NR).

[1154] The opinion of counsel is required by Rule 15Ba1–6, as adopted. General Instruction 13 (General Instruction 14 as proposed) now states that the non-resident municipal advisor filing Form MA must attach the opinion as an exhibit to the Execution Page.

[1155] The Execution Page for non-resident municipal advisors, as adopted, however, does not require the opinion of counsel to state that the municipal advisor is able, as a matter of law, to submit specifically to ''onsite'' inspection.

[1156] *See* Proposal, 76 FR 848.

[1157] *See* Section 15B(a)(2), providing that a municipal advisor applying for registration must file with the Commission an application for registration in such form and containing such information and documents concerning such municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Thus, failure to provide an opinion of counsel, as required, is a basis under the statute for the Commission to conclude that the requirements of Section 15B(a)(2) are not satisfied.

[1158] Under the Proposal, factors to be considered in determining whether a municipal advisor can carry out the described activities included, but were not 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. *See* Proposal, 76 FR 849.

[1159] Proposed Rule 15Ba1–7 also required municipal advisory firms to make and keep a record of the initial or annual review, as applicable, conducted by the municipal advisory firm of its business in connection with its self-certification on Form MA. Because the Commission is not adopting a self-certification requirement, the Commission is also not adopting this corresponding books and records requirement. *See infra* note 1344.

[1160] *See* proposed Rule 15Ba1–4(e). The rule required the annual self-certification to be filed by municipal advisory firms within 90 days of the end of the municipal advisor's fiscal year, or within 90 days of the end of the calendar year for municipal advisors that are sole proprietors.

[1161] Further, the Commission received two comment letters that, although did not object to the proposed self-certification requirement, related to the Commission's request for comment on an alternative to self-certification. *See infra* notes 1164 and 1165. The Commission also received many letters commenting, in the context of opposing the Commission's proposal to exclude appointed members of the governing body of a municipal entity from its interpretation of ''employee of a municipal entity,'' that the cost to comply with ''reporting, record keeping, and certification requirements'' and the related continuing education requirements and training, would take away from the board members' full-time jobs and families, and that such costs were unjustified. *See, e.g.,* letter from Susan N. Kelly, Senior Vice President of Policy Analysis and General Counsel, and Diane Moody, Director, Statistical Analysis, American Public Power Association, dated February 22, 2011; Nick Costanzo, Vice President Strategic, Financial, and Management Services, City of El Paso, Texas, dated February 22, 2011; and letter from Ben Gorzell, Chief Financial Officer and Michael D. Bernard, City Attorney, City of San Antonio, dated February 18, 2011.

required with Form BD and Form ADV.[1162] The commenter also asserted that requiring a municipal advisory firm to conduct an annual review of its business and determine that it can carry out its municipal advisory activities, including requiring the applicant to document the review process, would be costly, burdensome, and confusing. Further, the commenter noted that the Commission and the MSRB have yet to propose standards that are the subject of the certification. Accordingly, the commenter believed that, without such standards or related guidance, it is premature for prospective advisors to even comment. The commenter added that a municipal advisor would be unsure as to how to conduct the review, which may lead to unnecessary expense and exposure to liability (since the certification would be ''reports'' and therefore subject the municipal advisor to criminal liability). The commenter suggested that, if the Commission's interest is in ensuring competence of a municipal advisor, a better approach would be to create an MSRB examination process with qualifications clearly defined by the MSRB.

After careful consideration of the comment received, the Commission is not requiring self-certification in Form MA, as adopted. As the commenter notes, Forms BD and ADV, on which Form MA is based, do not require self-certification. Further, as pointed out by the commenter, the MSRB has yet to propose standards that are the subject of the certification. Accordingly, at this time, the Commission does not believe that self-certification should be required of municipal advisors.

In response to the Commission's request for comment regarding an independent third party review and whether the Commission should mandate a minimum level of review as an alternative to the self-certification requirements,[1163] the Commission received two letters. The two commenters did not object to the self-certification requirement but did oppose any third-party review or audit.[1164] Both commenters assert that such a review would impose unnecessary costs, and that Commission review would be sufficient. One of these commenters also opposed any minimum review standards.[1165] In concurrence with these commenters, the Commission has determined at this time not to establish a minimal level of review or require review by an independent third-party.

c. Information Requested in Form MA–I

As discussed above, although Form MA–I was proposed as a registration form for all natural person municipal advisors, Rule15Ba1–3, as adopted, exempts a natural person municipal advisor from the requirement to register, if such person is associated with a registered municipal advisory firm and engages in municipal advisory activities solely on behalf of a registered firm.[1166] Rule 15Ba1–2(b)(1), as adopted, requires a municipal advisory firm, on behalf of which an associated natural person engages in municipal advisory activities, to file Form MA–I with the Commission with respect to each such individual. Pursuant to Rule 15Ba1–2(b)(2), as adopted, a natural person who is a sole proprietor must file Form MA–I in addition to filing an application to register as a municipal advisor on Form MA.

The Commission received more than 30 comment letters relating to proposed Form MA–I. About 25 of these letters concerned the impact that the registration requirement for natural person municipal advisors would have if applied to volunteer members of public boards, in view of the fact that registration would require completing a Form MA–I. Because, under the rules as adopted, volunteer public board members would generally not be required to register, the Commission believes the concerns of these commenters have been otherwise addressed.[1167]

The remaining comment letters concerned the nature and scope of the information requested by Form MA–I and are discussed below.[1168] After considering the comments, the Commission is adopting Form MA–I substantially as proposed. However, the Commission is modifying Form MA–I to require a few additional points of information and is also eliminating some data requests. In addition, some of the language in Form MA–I has been modified to reflect the fact that, under the rules, as adopted, the form is no longer an application for registration and, except in the case of sole proprietors, will be completed by a firm, rather than by the individual with respect to whom the form is being filed.[1169]

As a general matter, the information requested on Form MA–I, as proposed and adopted, is similar to information requested on FINRA's Form U4.[1170] Some questions on Form U4 have been adapted for purposes of Form MA–I to relate specifically to municipal advisors. Other questions have been omitted as not necessary or appropriate in the municipal advisor context.

One commenter argued that information sought by Form MA–I largely duplicates information relating to associated persons sought by Form MA.[1171] The Commission acknowledges that a municipal advisory firm that registers by filing Form MA must already provide information on that form concerning the disciplinary history of each of its associated persons, including employees providing advice on behalf of the firm. However, there is very little overlap between the information required by Form MA and that required by Form MA–I that cannot be incorporated by reference.[1172] Moreover, Form MA–I elicits additional information that would not be provided by the firm as part of its Form MA. For

[1162] *See* SIFMA Letter I.

[1163] *See* Proposal, 76 FR 850.

[1164] *See* NAIPFA Letter I and Joy Howard WM Financial Strategies Letter. The Commission also received a third comment letter opposing, as overly-burdensome, any independent party review either prior to the filing of an initial application or on an annual or periodic basis thereafter. *See* Public FA Letter.

[1165] *See* NAIPFA Letter I.

[1166] *See supra* note 938.

[1167] *See supra* Section III.A.1.c.i. *See also infra* note 1187.

[1168] In addition, the Commission notes that a number of the comments received regarding proposed Form MA apply similarly to proposed Form MA–I. Examples include concerns about the duplicative nature of seeking information already gathered through other registration programs; confidentiality issues; and compliance burdens. These comments have been discussed in the section on Form MA above and are not further addressed here. *See, e.g., supra* notes 991–992 and 995–996 and accompanying text and the Commission's response in the discussion following these comments.

[1169] For example, the form will now no longer refer to the individual as ''the applicant'' or ''the registrant.''

[1170] *See* Form U4, *supra* note 992. *See also* Proposal, 76 FR 851, note 237 and accompanying text.

[1171] *See* SIFMA Letter I. The concern over duplication of information was raised as an argument against separate registration of individuals on Form MA–I. The rules, as adopted, no longer require registration for natural person municipal advisors acting solely as employees of a municipal advisory firm. However, because Form MA–I is being retained in the rules, as adopted, the Commission believes it important to address concerns that the information required by Form MA–I is redundant of information already available from the firm's Form MA.

[1172] Regarding incorporation by reference, *see supra* notes 994–995 and accompanying text. The Commission acknowledges that a municipal advisory firm must already provide information on Form MA concerning the disciplinary history of 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.'' However, to the extent that the disciplinary history of an individual is reported in Form MA, it can be incorporated by reference in Form MA–I.

example, Form MA–I requires the following information about each relevant natural person that would not be found on his or her firm's Form MA if engaged in municipal advisory activities on behalf of a firm or on his or her own Form MA if acting as a sole proprietor: social security number of the individual; other names of the individual; his or her residential and employment history; the offices of the firm where the individual is located and from which he or she is supervised; the names of any other municipal advisory firms that employ the individual; and any other businesses in which the individual is engaged.[1173]

Therefore, in completing a Form MA–I for each employee, the Commission believes that a firm will be supplementing, rather than duplicating, the information provided on Form MA. For this reason, as proposed and adopted, the rules require a sole proprietor to complete and file both forms.

Among the comments received by the Commission, specifically with regard to Form MA–I, as has already been discussed, several commenters questioned the need for separate registration forms for firms and their individual employees.[1174] One commenter believed that separate registration of individuals on Form MA–I could ''lead to confusion'' and ''inadvertent inconsistencies in the information.''[1175] Another commenter believed that processing the estimated 21,800 forms expected to be filed would put ''significant strain'' on the Commission.[1176] In addition to these comments, one commenter suggested that, in lieu of requiring individuals to register separately with the Commission on Form MA–I, the Commission could ''work with the MSRB to establish, through the MSRB, a licensing and registration mechanism for individuals who are municipal advisors, which would be similar to the program used to register a broker-dealer's licensed associated persons with FINRA.''[1177] Further, the commenter stated that, if the Commission believes it is necessary to formally register individuals (in addition to licensing them), the MSRB could adopt Form U4 and require it to be filed in connection with granting a license to individuals who engage in municipal advisory activities on behalf of a Commission- and MSRB-registered municipal advisory firm.[1178] The Commission believes that these comments have been addressed by the exemption created in the rules, as adopted, for natural persons who engage in municipal advisory activities solely on behalf of a registered municipal advisor.[1179]

Commenters also expressed concerns regarding the disclosures required by Form MA–I and the plan to make them publicly available.[1180] For example, one commenter believed that some of the information required in Form MA–I ''could not be disclosed by a law enforcement agency, such as the individual's detailed criminal history—which includes arrests that do not result in prosecution or conviction.''[1181] The commenter further believed that ''[g]overnment disclosure of a compiled criminal history is a criminal offense.''[1182]

The Commission believes that it is consistent with the Exchange Act to require disclosure of such information in order to permit persons whom Form MA–I concerns to lawfully engage in municipal advisory activities.[1183] Regarding a commenter's concern about government disclosure of compiled criminal history, the Commission notes that engaging in municipal advisory activities is voluntary. Persons engaging in municipal advisory activities are on notice that the information supplied to the Commission on Form MA and MA–I will not be kept confidential (except where indicated otherwise). Therefore, if a person does not wish to disclose his or her criminal history, such person may choose to not engage in municipal advisory activities. In addition, the Commission notes that the information requested on Form MA–I is consistent with comparable provisions in Forms BD and ADV, as well as Form U4.[1184]

One commenter focused on the impact that Form MA–I could have on bank employees, believing that it would require such information as the addresses of all offices at which the employee will be physically located or supervised and noting that it was not uncommon for bank branch employees such as tellers to work at multiple branch locations in a geographic region.[1185] As discussed above, the Commission is limiting the application of the term investment strategies, providing a limited exemption for banks, and permitting the registration of SIDs.[1186] Due to these changes, few, if any, bank employees of the type described by the commenter will be engaging in municipal advisory activities that would require filing of a Form MA–I. For those who are, the Commission believes that it is as important to obtain this information as it is with respect to any other natural

[1173] As noted above, the Commission believes that, in fact, there is very little overlap between the information required by Form MA and that required by Form MA–I. For example, when Form MA asks for the number of employees of the firm engaged in municipal advisory activities, such information might be gleaned, technically, by counting all the Form MA–I submissions filed by the firm, but is not readily apparent. When Form MA asks for the names of all associated persons of the firm and requires the firm to indicate whether each such person is active in certain municipal advisory related fields, the firm is not required to state whether the associated person is an employee and it does not capture information on other businesses in which the person is engaged. The requirement to list the firm's registration information (which, of course, is available on the firm's Form MA) on the Form MA–I of the individual will better serve to identify the individual and locate his or her firm when only the database of individuals reported on Form MA–I is being searched, separately from the database in which information obtained in Forms MA is collected. Similarly, the responses to Form MA's questions in Item 9, in which a firm must disclose whether any of its associated persons has had a disciplinary history, do not shed light on the history of any particular employee unless the relevant DRPs are consulted. Moreover, the disciplinary history questions in Item 6 of Form MA–I, other than those concerning criminal, regulatory, and civil judicial actions, do not appear in Form MA.

[1174] *See* Deloitte Letter; JP Morgan Chase Letter; SIFMA Letter I. Deloitte stated that registration for natural persons should be eliminated altogether; or that individuals at least be required to register only as ''registered representatives.'' *See also* MSRB Letter I, stating that ''forms relating to individuals at municipal advisor entities should be viewed as officially submitted by the municipal advisor entity.''

[1175] *See* Deloitte Letter.

[1176] SIFMA Letter I.

[1177] *Id.* SIFMA stated that because the MSRB is already planning to develop qualification tests for individuals engaged in municipal advisory activities, ''having only the MSRB, as opposed to both the SEC and MSRB, involved in the licensing and registration of individuals would eliminate duplication and reserve the SEC resources for regulation of municipal advisory firms.''

[1178] *See id.* SIFMA added that, because many individual municipal advisors may also be associated persons of a broker-dealer or investment adviser, it would better serve the interests of the public to have a single source of information—on Form U4—about a licensed individual. It would also be easier for an individual and his or her employer to ensure that the individual is properly licensed under all applicable regulatory programs if only a single form is required to be filed with any applicable regulator. *See also* Financial Services Roundtable Letter (advocating use of Form U4 for individuals).

[1179] *See supra* note 938.

[1180] The comments cited in this paragraph appeared in the context of letters opposing the application of the definition of municipal advisor to appointed members of public boards, *see supra* note 1161, but are treated here separately because of their possible relevance to any municipal advisor.

[1181] *See* letter from Jo Anne Bernal, County Attorney, El Paso County, Texas.

[1182] *Id.*

[1183] *See* Section 15B(c)(2) and (4) of the Exchange Act.

[1184] Except where indicated otherwise, the information supplied on Forms BD, ADV, and U4 is not kept confidential.

[1185] Capital One Letter.

[1186] *See supra* Sections III.A.1.b.viii.

person who is engaged in municipal advisory activities.

The Commission also received comment letters on Form MA–I from many municipal entities and agencies concerned about the impact of requiring appointed members of public boards to make the disclosures required by the form.[1187] As discussed in Section III.A.1.c.i., the Commission is exempting all members of the governing body of a municipal entity (acting in their capacity as such), including appointed members, from the requirement to register as municipal advisors. Thus, the concerns of these commenters should be alleviated.

Items 1 and 2: Identifying Information and Other Names

Item 1 of Form MA–I is being adopted substantially as proposed, with minor modifications as discussed below.[1188] Item 1 requires certain basic identifying information to be disclosed about any natural person engaged in municipal advisory activities.[1189] Although, as discussed above, certain information about an employee of a firm would already be available through the firm's Form MA, the individual's Form MA–I requires more information, including:

- the individual's CRD Number, if he or she has one;
- the individual's social security number; [1190]
- 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 is or will be supervised; and
- whether any of these offices are located in a private residence.

These elements of Item 1 are being adopted as proposed. With respect to information about the employee's firm, Item 1, as proposed, would have required the filer to provide any SEC file and registration numbers assigned to the firm in any registered capacity and also the firm's CRD Numbers, if any. To ease the completion of the form, Item 1, as adopted, requires a filer only to indicate whether the firm is currently registered as a municipal advisor on a Form MA and, if not, whether it has filed an application for registration on Form MA. If the latter, the filing date and the firm's EDGAR CIK number must be provided.

Item 1, as adopted, additionally requires a filer to provide the name under which the firm primarily conducts its municipal advisor-related business, if different from its legal name. It further also takes into account that an individual may be employed at more than one municipal advisory firm and requires entry of the relevant information for each such firm.[1191] The Commission believes that this additional information would be useful to the Commission's oversight of the municipal advisory market, without unreasonably increasing the burdens upon registrants in completing the form.

As proposed, Item 2 requires a filer to disclose all other names that the natural person engaged in municipal advisory activities is using or has been known by since the age of 18, such as nicknames, aliases, and names before and after marriage. No comments were received concerning Item 2, and it is being adopted substantially as proposed.

As stated in the Proposal, the Commission believed that the information sought by Items 1 and 2 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.[1192] The same information will be valuable to regulators in overseeing municipal advisors and investigating possible instances of wrongdoing.

Item 3: Residential History

In Item 3, which is being adopted substantially as proposed,[1193] Form MA–I requires disclosure of each location where the natural person engaged in municipal advisory activities has resided for the past five years, including the time period at each residence.[1194] Changes in residence must be reported (via an amendment) as they occur. In addition, no gaps greater than three months between addresses are permitted.

As stated in the Proposal, the Commission believes that the residential history of a natural person engaged in municipal advisory activities, like the additional identifying information Form MA–I seeks, will be useful for municipal entities and other interested parties in exploring the background, credentials, reliability, and trustworthiness of the individual and be valuable to regulators in overseeing municipal advisors and investigating possible instances of wrongdoing. The information that is required regarding residential history is similar to the information requested on Form U4.[1195]

Item 4: Employment History

In Item 4, which is being adopted substantially as proposed,[1196] Form MA–I requires a listing of the complete employment history of the natural person engaged in municipal advisory activities 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 must be included. In addition, the filer may not leave a gap longer than three months between entries. As discussed in the Proposal, the information required is similar to the information requested on Form U4.[1197] Such information will help inform an understanding of an employee's business experience and provide useful information in preparing for regulatory examinations.[1198]

[1187] *See, e.g.,* letter from Barry Moline, Executive Director, Florida Municipal Electric Association, dated February 22, 2011; and Pennsylvania Public School Employees' Retirement Board Letter.

[1188] No comments were received concerning Item 1.

[1189] This includes, for example, the individual's full legal name. It also requires the registration and other identifying numbers of the individual's firm to be provided directly in the Form MA–I, to make it easier for regulators, municipal entities and investors to gather the information they need.

[1190] This information will not be made publicly available. As stated in the Proposal, 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. 78*o*–4(c)). *See* Proposal, 76 FR 851, note 240. *See also generally supra* note 968.

[1191] The form also asks the filer for the total number of such firms. This question does not require a filer to research any further information than indicated above, but it can serve as a helpful cross-check to the filer as well as to regulators, and is also a useful number for interested parties who do not need the additional details.

[1192] *See* Proposal, 76 FR 851.

[1193] No comments were received concerning Item 3, other than in the general context of concerns that the degree of detail required by the forms was overly burdensome and, in particular, in the context of concerns about registration requirements for appointees to municipal entity boards, which concerns are discussed elsewhere in this release.

[1194] Non-substantive, technical, and clarifying changes have been made to Item 3. *See infra* note 1237.

[1195] *See* Proposal, 76 FR 852. As stated in the Proposal, the Commission does not intend to make the information required by Item 3 publicly available. *See id.,* at 852, note 241. A statement to this effect has been added to the introduction to Item 3, as adopted.

[1196] No comments were received concerning Item 4, other than in the general context of concerns that the degree of detail required by the forms was overly burdensome and, in particular, in the context of concerns about registration requirements for appointees to municipal entity boards, which concerns are discussed elsewhere in this release.

[1197] The Commission intends to make this information publicly available.

[1198] *See* Proposal, 76 FR 852. Because no separate blanks are provided for statuses other than

Continued

Item 5: Other Business

Item 5 of Form MA–I is being adopted substantially as proposed.[1199] Item 5 requires information about the individual's other business activities, if any, in which he or she is currently engaged, as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. The form asks 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 filer is required to provide the individual's position, title, or relationship with the other business, the start date of the relationship, the approximate number of hours per month the individual devotes to the other business, and a brief description of his or her duties relating to the other business. As discussed in the Proposal, the information sought in this section is similar to the information sought by the equivalent section in Form U4. Such information will help the Commission understand the other business activities of a natural person engaged in municipal advisory activities and will help staff prepare for examinations.[1200]

Item 6: Disclosures Relating to Any Criminal Action, Regulatory Action, Investigation, Civil Judicial Action, Customer Complaint/Arbitration/Civil Litigation, Termination, Certain Financial Matters, and Judgments and Liens

Item 6 of Form MA–I, regarding the disciplinary history of the individual, is being adopted substantially as proposed.[1201] However, the Commission has made some modifications to the information sought in the DRPs, which are discussed below.

Item 6 of Form MA–I includes three sections that require the same general types of information regarding an individual's criminal, regulatory, and civil judicial history, if any, as required regarding municipal advisory firms in corresponding sections in Form MA,[1202] although the questions in these sections of Form MA–I differ somewhat from those in the corresponding sections of Form MA, as will be discussed below. As in Form MA, certain responses in the criminal, regulatory, and civil judicial action sections of Form MA–I require disclosure of complete details of all events or proceedings in DRPs pertaining to these areas.

Item 6 of Form MA–I also has five additional disclosure sections [1203] relating to an individual, which are also discussed below. Four of these ask about any investigations, terminations, customer complaints/arbitration/civil litigation, or judgments/liens relating to the individual. Each of these four sections has an associated DRP requiring further detail where applicable. The fifth additional section, which has no associated DRP, asks for certain financial disclosures. As discussed in the Proposal, the Commission believes that additional disclosures in these five areas, which are also required of individuals associated with broker-dealers and investment advisers on Form U4, are appropriate 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.[1204]

As discussed in the Proposal, the Commission believes that the additional disclosure items in the DRPs will be helpful to municipal entities and obligated persons as clients or prospective clients of municipal advisors.[1205] The information may 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 an individual.[1206]

As a general matter, as was the case with the proposed DRPs of Form MA, many of the questions in the proposed DRPs of Form MA–I did not ask for specifics. The Commission believes that, with regard to certain questions, additional details of the kind requested in the adopted versions of Form MA's DRPs will help regulators, municipal entities, and other interested parties more easily research and better assess the background of the individual that is the subject of the DRP of Form MA–I.[1207] Thus, many of the revisions made to the DRPs of Form MA have also been made to the DRPs of Form MA–I.

Among these are changes in questions relating to: removing a DRP filed in error; [1208] incorporation by reference of disclosures already filed elsewhere; [1209] names and types of courts, regulatory authorities and forums and their locations, and parties who initiated the relevant action; [1210] how to report an event; [1211] appeals; [1212] disposition of a case and sanctions imposed in criminal cases; [1213] sanctions and/or relief sought, type of resolution, and sanctions ordered in regulatory and civil judicial actions; [1214] and other matters.[1215]

The following discussion summarizes Item 6 and its related DRPs as well as additional revisions made in their adopted versions:

Criminal Action Disclosures

With respect to felonies, Item 6 of Form MA–I—in contrast to the disclosures required by Item 9–A of Form MA—requires disclosure of:

- any past conviction of, or plea of guilty or nolo contendere to, a felony by the individual, 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 individual in the past, rather than limiting disclosure to currently pending charges, as in a firm's or sole proprietor's Form MA; and
- any convictions of, or plea of guilty or nolo contendere to, a felony by an organization based on activities that occurred when the individual exercised control over the organization—a disclosure not required in Form MA.

With respect to misdemeanors, while Form MA requires only disclosures of convictions and pleas concerning an individual looking back ten years, and requires only disclosures of charges that are currently pending, Form MA–I requires disclosure of such convictions, pleas, and charges that occurred at any time in the individual's past. Misdemeanors, and convictions, pleas,

employment at a firm or company, (*e.g.,* military service, homemaking, unemployment, education, or travel), guidance has been included in Item 4, as adopted, instructing the filer to enter such statuses in the space provided for ''Name of Municipal Advisory Firm or Company.'' Regarding non-substantive, technical, and clarifying changes, generally, *see infra* note 1237.

[1199] No comments were received concerning Item 5. Only slight clarifying changes have been made in the wording of this item as adopted.

[1200] *See* Proposal, 76 FR 853.

[1201] The Commission received no comments specifically relating to Item 6 in the Proposal.

[1202] *See supra* Section III.A.2.b.

[1203] In the proposed version of Item 6, the question about investigations appeared at the end of the Regulatory Action section. In the adopted version, a separate section has been created for this question (which remains the same) for the sake of clarity, as it concerns both criminal and regulatory investigations. Form MA–I, both as proposed and adopted, has a separate DRP that concerns only investigations reported in this question.

[1204] *See* Proposal, 76 FR 853.

[1205] *See id.,* at 854.

[1206] *See supra* notes 1093–1097 and accompanying text (discussing grounds for revocation of a municipal advisor's registration or imposing other sanctions).

[1207] *See supra* note 1123.

[1208] *See supra* text following note 222.

[1209] *See supra* notes 1127–1128 and accompanying text.

[1210] *See supra* notes 1129–1130 and accompanying and following text.

[1211] *See supra* text accompanying note 1132.

[1212] *See supra* note 1134 and accompanying text.

[1213] *See supra* notes 1135–1137 and accompanying text.

[1214] *See supra* notes 1137–1139 and accompanying text.

[1215] *See supra* notes 1140-1142 and accompanying text.

and charges of misdemeanor against an organization while the individual exercised control over the organization are also required to be disclosed.

These criminal action disclosure requirements regarding individuals beyond the information required in Form MA, are consistent with the disclosure requirements on Form U4. In addition, as discussed in the Proposal, these disclosures provide additional information with respect to natural persons engaged in municipal advisory activities that will 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 individual or his or her firm.[1216]

As proposed and adopted, the Criminal Action DRP of Form MA–I asks for additional details regarding, among other things: the charges, number of counts, and the court in which they were brought; status of the action; details of its disposition and sanctions ordered; and the date of amended charges, if any. It also provides an option and space for comment consisting of a brief summary of the circumstances leading to the charge(s) as well as their current or final disposition.

Certain revisions have been made in the adopted version of the DRP. For example, in its disclosure requirements concerning the charges, the DRP, as adopted, asks specifically whether the charge is (a) municipal advisor-related or (b) investment-related; and, if so, in each case, (c) what product type it involved.[1217]

Moreover, as proposed, the DRP required a description, in narrative form, of details concerning any sentence or penalty imposed, its start date, and its duration, and the amount and date of payment.[1218] As adopted, the DRP asks specifically whether any sentence or any other penalty is ordered, and requires, if so, a description of whether it involved prison, jail, probation, community service, counseling, education, or other. It further asks, in question-by-question format, for the duration in days, months, and/or years of any incarceration, the start and end dates, whether any concurrent sentence is to be served, and, if so, the end date. It also asks, in question-by-question format, whether any portion of a monetary penalty was reduced or suspended, whether it has been paid in full, and, if not, how much remains unpaid. These details should contribute to the clarity of the picture received by regulators, municipal entities, and investors of the individual's disciplinary background.

Finally, the proposed Criminal Action DRP of Form MA–I did not ask specifically about appeals. In its adopted version, the DRP asks whether the criminal action was appealed, and, if so, the name and location of the appeals court, and other details. Choices are also provided to describe specifically the disposition of any appeal.[1219] The Commission believes that obtaining this information will better enable regulators, municipal entities, and other interested parties to research the complete criminal history of the individual.[1220]

Regulatory Action Disclosures

As proposed and adopted, the questions in Item 6 of Form MA–I relating to regulatory actions by the Commission or the CFTC, similar to those in Form U4, require the same disclosures as in proposed Item 9 of Form MA and additional disclosures, including whether the Commission or the CFTC has ever found the individual 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.

As proposed and adopted, Form MA–I requires the same disclosures as proposed Form MA with respect to findings and actions relating to the individual by other federal regulatory agencies, state regulatory agencies, and foreign financial regulatory authorities. It also requires additional disclosures, including whether the individual 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 individual 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.

In addition to the disclosures required of a municipal advisory firm regarding its individual associated persons on proposed Form MA, Form MA–I as proposed and adopted requires disclosure of any finding by an SRO that the individual:

- 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 as proposed and adopted also requires disclosure of whether the individual had an authorization to act as an attorney, accountant or federal contractor revoked or suspended.

Item 6 of Form MA–I as proposed and adopted also requires disclosure of whether the individual has been notified in writing that he or she is currently the subject of a regulatory complaint or proceeding that could result in any occurrence of the kind that would trigger any of the disclosure requirements described above relating to regulatory actions, except the latter occurrence pertaining to attorneys, accountants, and federal contractors. The form advises that if the answer is affirmative, the filer must complete a Regulatory Action DRP.[1221]

[1216] *See* Proposal, 76 FR 853.

[1217] The Commission believes that these additional details contribute to an accurate picture of the individual's disciplinary history and notes that the same questions are asked in the equivalent DRP of Form MA, as both proposed and adopted. On the other hand, specific questions regarding pleas to amended charges have been removed as unnecessary because the requested information should be provided in responses to other questions.

[1218] The form provided a blank space for: ''Sentence/Penalty, Duration (if suspension, probation, etc.), Start Date of Penalty: (MM/DD/YYYY), End date of Penalty (MM/DD/YYYY); If Monetary penalty/fine—Amount paid, Date monetary/penalty fine paid: (MM/DD/YYYY), if not exact, provide explanation.'' It also gave the filer the option of providing ''a brief summary of circumstances leading to the charge(s) as well as the current status or final disposition.''

[1219] These choices are: affirmed; vacated and returned for further action; or vacated/final. An applicant may also respond ''other,'' in which case the other type of disposition must be specified.

[1220] *See also supra* note 1134.

[1221] Form MA does not include an analogous question and advisory in its regulatory action section. Item 6, as proposed, also asked whether the

Continued

The DRP for regulatory action disclosure in Form MA–I, as proposed and adopted, requires the filer to provide further details, including: the allegations, which regulatory authority initiated the action, the kind of product involved, and the sanctions sought; the status of the action; the disposition or resolution of the action, the sanctions ordered, and their duration; the registration capacities of the individual that were affected; whether requalification was a condition of any sanction reported, and whether it was by exam, retraining, or other process; the length of time given to requalify; and whether the requalification condition was satisfied. Disclosures required in the Regulatory Action DRP, as proposed, also include details of any monetary sanction imposed, including amount; portion levied against the individual; any amount waived; 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. Revisions made in the Regulatory Action DRP, as adopted, include the following:

- In the DRP, as proposed, a filer was asked to identify every type of product involved in the action. As adopted, the DRP requires the filer to distinguish between principal product types and other products.
- As proposed, the DRP asked about any bars and suspensions of the individual from his or her registration capacities. As adopted, the DRP also requires information specific to any injunction that was imposed as a regulatory sanction.
- In addition to the questions about requalification and exams, as described above, the DRP as adopted asks for a description in narrative form of any examination, re-training, or other process that was required as a condition for the person to re-qualify.

The Commission believes that these additional details will provide regulators, municipal entities, and investors with a more accurate picture of disciplinary history of the individual.[1222]

Disclosure of Investigations [1223]

Item 6 of Form MA–I, as proposed and adopted, asks whether the individual has been notified in writing that he or she is currently the subject of any investigation that could result in a positive answer to any of the questions in either the criminal and regulatory sections of Item 6 described, except the question pertaining to attorneys, accountants, and federal contractors. If the answer is positive, an Investigation DRP must be filed.

The Investigation DRP requires details of any such investigation, including the date the investigation was initiated and whether it was initiated by an SRO, a foreign financial regulatory authority (giving the specific jurisdiction), the Commission, other federal agency, or ''other.'' The Investigation DRP requires that the full name of the authority that initiated the investigation be specified. Space is provided for the filer to briefly describe the nature of the investigation, if known; whether it was pending or resolved; and details of any resolution. Space for optional comment is also provided to present a brief summary of the circumstances leading to the investigation and its current status or final disposition and/or findings.

The Investigation DRP also asks for similar details regarding a criminal investigation by a federal, military, state, foreign or international authority or court. Although Item 6 requires a DRP for criminal investigations, the DRP, as proposed, did not specifically reference criminal investigations or authorities.

Civil Judicial Action Disclosure

The disclosures required by Form MA–I with respect to certain matters relating to an individual's civil judicial history are the same as disclosures required on Form MA. Thus, a filer is required to disclose on Form MA–I whether the individual:

- was ever enjoined by a domestic or foreign court in connection with any investment-related or municipal advisor-related activity;
- was ever 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
- ever had an investment-related or municipal advisor-related civil action brought against him or her dismissed, pursuant to a settlement agreement, by a domestic jurisdiction [1224] or foreign financial regulatory authority; or
- was ever named in any such pending action that could result in a positive answer to the three previous questions.

As discussed in the Proposal, the Commission believes that it is appropriate to seek information regarding investment-related activities as well as municipal advisor-related activities due to the significant similarities that exist between the two advisory functions. Moreover, 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.[1225]

A DRP is required for affirmative responses to questions under this item. Specifically, the DRP requires, 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 also provides the opportunity for a filer to provide additional comment, including a summary of the circumstances leading to the action and current status.

The Civil Judicial Action DRP, as adopted, has been modified to ask whether the individual is a named defendant in the action for which the DRP is being completed; [1226] indicate, if an order was issued, whether the order is a final order based on violations of any laws or regulations that prohibit fraudulent or deceptive conduct; and indicate whether a condition of any sanction was requalification by examination, retraining, or other process. The Commission believes that these changes generally will add clarity

individual has been notified in writing that he or she is the subject of an *investigation* that could result in affirmative answers to questions about criminal and regulatory actions above in the form. This question has been separated into a separate section in the form, as adopted, titled ''Investigation Disclosures.'' *See infra* note 1223 and accompanying text.

[1222] Other revisions in the adopted version of the Regulatory Action DRP: The form now asks for date of service of process in pending actions; and additional details when one or more injunctions specify different time periods; and more choices to describe sanctions sought, how the action was resolved, and sanctions ordered.

[1223] *See supra* note 1203.

[1224] The phrase ''domestic jurisdiction'' is used in the form, as adopted, in place of ''state'' in the proposed version. The question of whether such an occurrence is part of the individual's history was not intended to be limited to state actions.

[1225] *See* Proposal, 76 FR 854–855.

[1226] In addition, this DRP, as proposed and adopted, asked for the full name(s) of the plaintiff(s) in the action. The adopted version further asks the filer whether all plaintiffs were fully identified, to make clear that the information needs to be complete.

for filers in determining the type of information that must be provided.[1227]

Customer Complaints/Arbitration/Civil Litigation

Form MA does not require a municipal advisory firm to disclose any customer complaints, arbitration matters, and civil litigation concerning natural person municipal advisors. Form MA–I, however, requires disclosure of whether an individual engaged in municipal advisory activities has ever been:

- the subject of a complaint initiated by a customer, 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 customer 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 filer must indicate whether the complaint is still pending or was settled. In the case of arbitration or civil litigation, the filer must indicate whether the arbitration or litigation is still pending; resulted in an arbitration award or civil judgment against the individual in any amount; or was settled.

A DRP is required for affirmative responses to questions under this item. Specifically, the relevant DRP requires the filer to disclose the customer's name; the customer's state of residence and other states of residence; the employing firm of the individual when the activities occurred that led to the complaint, arbitration, CFTC reparation or civil litigation; and the allegations and a 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 individual is not a named party, the DRP requires 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 litigation is pending, and if not, the status. The DRP requires disclosure of the status date and the settlement award amount, including the individual's contribution amount.

If the matter involves an arbitration or CFTC reparation and the individual is a named respondent, the DRP requires 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 individual's contribution).

If the matter involves a civil litigation in which the individual is a defendant, the DRP requires 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 individual; 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 individual'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 also provides for optional additional comment, such as a summary of the circumstances leading to the complaint.

As discussed in the Proposal, these disclosures, too, mirror similar disclosures in Form U4, provide additional information about natural persons engaged in municipal advisory activities that may be useful to municipal entities or obligated persons as clients or prospective clients, and help the Commission prepare for and plan examinations.[1228]

Several revisions have been made to this DRP, as adopted. In the questions relating to settlements, awards, and monetary judgments, the DRP now additionally asks whether any portion of the individual's settlement, award, or monetary judgment amount was waived, and, if so, how much; and whether the final amount was paid in full, and, if so, the date. In the section relating to civil litigation, the DRP now additionally asks whether the individual appealed, and, if so, to which court, its location, and other details.[1229]

Termination Disclosure

Unlike Form MA, Form MA–I requires disclosure regarding the termination of a natural person's employment. Specifically, consistent with Form U4, Form MA–I asks whether the individual 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 questions described above requires additional information on a related DRP. Specifically, the DRP requires disclosure of 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 also provides for optional additional comment, such as a summary of the circumstances leading to the termination.

As discussed in the Proposal, this disclosure will provide information that will be useful to the Commission in planning and preparing for inspections and examinations. The disclosure also will be useful to the public generally (including municipal entities and obligated persons, as clients or prospective clients).[1230]

Financial Disclosures

Item 6 of Form MA–I, as proposed and as adopted, also requires financial disclosures regarding individuals that are not required to be made on Form MA by municipal advisory firms, generally, regarding their associated persons or by sole proprietors regarding themselves. Specifically, the form asks the filer whether, within the past ten years:

- the individual has made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition;
- an organization controlled by the individual has made a compromise with

[1227] In addition, the list of sanctions or relief that are specified as required to be reported has more detail in order to provide more choices for filers. The list of specific possible resolutions of the action that the applicant can indicate as applicable has also been expanded. More information also is sought regarding details of how the action was resolved, and, if resolved with sanctions, more details about those sanctions.

[1228] *See* Proposal, 76 FR 855.

[1229] *See generally supra* notes 1208–1215.

[1230] *See* Proposal, 76 FR 856.

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 individual 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 filer must disclose whether a bonding company ever denied, paid out on, or revoked a bond for the individual. There is no DRP associated with these financial disclosures.

Judgment/Lien Disclosure

Item 6 of Form MA–I also asks whether the individual has any unsatisfied judgments or liens against him or her. An affirmative response requires additional disclosure on a DRP. Specifically, the filer must disclose the amount, holder, and type of the judgment or lien. The form also requires information about the date the judgment or lien was filed, the court in which the action was brought, the name and location of the court, the docket or case number,[1231] 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 also provides for optional comment, such as a brief summary of the circumstances leading to the action.[1232]

As discussed in the Proposal, the Commission believes that the information that is required, which is consistent with that required by Form U4, will be useful for its regulatory purposes, including planning and preparing for inspections and examinations. The Commission also believes that the information will be useful to the public generally (including municipal entities and obligated persons, as clients or prospective clients).[1233]

Other Changes in Form MA–I, as Adopted

Additional Modifications to the DRPs

The Commission has made the following modifications to the DRPs in addition to those discussed above. An instruction has been added at the beginning of all the DRPs, regarding incorporation by reference, to clarify that the filer of Form MA–I may incorporate information either from a DRP that was filed by the firm, or from a DRP filed by another Commission registrant about the individual. This should help filers avoid the inconvenience and burden of completing the additional information.

When a DRP is being filed to remove a previously filed DRP, the filer in each case is asked whether the reason is because the matter was resolved in the individual's favor, or because the DRP was filed in error.[1234] Moreover, as proposed, several of the DRPs asked for the name of the employing firm of the individual when the relevant event occurred only if the firm was a municipal advisory firm.[1235] The Commission has concluded, however, that the name of the individual's employer when the activity occurred can be useful to regulators, municipal entities, and investors regardless of whether the individual was employed specifically by a municipal advisory firm, and is not limiting the requested information to such firms. In the case of a municipal advisory firm employer, however, the DRPs as adopted ask for the municipal advisor registration number of the firm.[1236]

As proposed, the Regulatory and Civil Action DRPs asked the filer to identify the principal product types that were the subject of the activity regarding which the formal action involving the individual was taken. As adopted, they also ask for any other product types. Finally, the adopted versions of the Regulatory and Civil Action DRPs ask for the date on which notice or other process was served if the action being reported on the DRP is still pending.

An Associated Person Who Ceases To Be Engaged in Municipal Advisory Activities

Because Form MA–I, as adopted, is not a registration form, when a natural person associated with a registered municipal advisor ceases to engage in municipal advisory activities on its behalf, Form MA–W—which is a form designed for withdrawal of registration—will not be required. Instead, the change must be reported by the registered municipal advisor that filed the Form MA–I relating to that person. This is accomplished by filing an amendment to the Form MA–I, which must be submitted promptly, like any other amendment.

For this purpose, a filer submitting an amendment to Form MA–I can indicate that the purpose of the amendment is to report that the individual to whom the form relates is no longer an associated person of the municipal advisory firm or no longer engages in municipal advisory activities on its behalf. When submitting an amendment of this kind, the filer must complete only the portion of the form asking for the name of the individual, his or her social security number, and CRD Number if any (Item 1–A) and the Execution Page of the form (Item 7).

Non-Substantive, Technical, and Clarifying Changes

In addition, a number of non-substantive, technical and clarifying changes have been made to Form MA–I, as adopted, to make the form clearer and more user-friendly. These include, where applicable, the same kinds of changes made to Form MA.[1237]

Item 7: Execution of the Form

If Form MA–I is being filed by a municipal advisory firm with respect to a natural person engaged in municipal advisory activities on its behalf, the authorized representative of the firm who signs the Execution Page of Form MA–I must attest to the truth and correctness of the information provided in the form. He or she must also attest that the firm has obtained and retained written consent from the individual that service of any civil action brought by, or notice of any proceeding before, the SEC or any self-regulatory organization in connection with the individual's municipal advisory activities may be given by registered or certified mail to the individual's address given in Item 1 of the firm.

If Form MA–I is being filed by a natural person municipal advisor who is a sole proprietor, by signing the Execution Page of Form MA–I, the filer must represent that the information and statements made in the form are true and correct. He or she must also consent that service of process of any civil action or notice of any proceeding before the Commission or an SRO

[1231] *See supra* note 968.

[1232] Modifications made to the DRPs of Form MA–I as adopted are discussed below under the sub-heading, ''Other Changes in Form MA–I, As Adopted.''

[1233] *See* Proposal, 76 FR 856.

[1234] This question is adapted from a similar question in the DRPs to Form MA, and should help clarify the status of the applicant for users of the information.

[1235] Included are the Regulatory, Civil Judicial Action, Termination, and Customer Complaint/Arbitration/Civil Litigation DRPs.

[1236] The Commission believes this specific information is particularly relevant for municipal advisor regulation.

[1237] *See supra* note 1147. Examples of other revisions of this nature in Form MA–I include: Guidance advising filers to refer to the Specific Instructions for Form MA–I; corrections of inaccurate references; clarifying and editorial changes; and additional instructions to aid the filer that do not introduce any substantive changes.

regarding its municipal advisory activities may be given by registered or certified mail to the address he or she has supplied in Item 1 of the form.

As proposed, Form MA–I also required its signatory to certify that he or she has: (a) Sufficient qualifications, training, experience, and competence to effectively carry out his or her designated functions; (b) 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 (c) the necessary understanding of, and ability to comply with, all applicable regulatory obligations.

The Commission received comment letters on the self-certification requirement in Form MA–I from many municipal entities and agencies concerned about the impact of requiring appointed members of public boards to make such certifications. As discussed in Section III.A.1.c.i., the Commission is exempting all members of the governing body of a municipal entity (acting in their capacity as such), including appointed members, from the requirement to register as municipal advisors. Thus, the Commission believes that the concerns of these commenters have been addressed. However, one comment received by the Commission regarding the self-certification requirement in Form MA–I, as proposed, called the requirement ''problematic.'' [1238]

In view of the change in the nature of Form MA–I, as adopted, including who is required to sign the form, the Commission has decided to eliminate the self-certification requirement in Item 7. Because, under the rules, as adopted, individuals who engage in municipal advisory activities on behalf of a registered firm are exempt from registration, and, with respect to these individuals, the function of Form MA–I is only to provide information, the self-certification requirement is no longer *a propos.* Moreover, as discussed above, the Commission has determined to remove the self-certification requirement with respect to firms in Form MA. Thus, Form MA–I, as adopted, will no longer require self-certification.

3. Rule 15Ba1–3: Exemption of Certain Natural Persons Associated With Registered Municipal Advisors From Registration[1239]

Rule 15Ba1–3, as adopted, exempts certain natural persons from registration with the Commission as a municipal advisor if the natural person is associated with a registered municipal advisor and engages in municipal advisory activities solely on behalf of a registered municipal advisor. This exemption is discussed above in Section III.A.2.a.[1240]

4. Rule 15Ba1–4: Withdrawal From Municipal Advisor Registration; Form MA–W

a. Rule 15Ba1–4: Withdrawal From Municipal Advisor Registration

Proposed Rule 15Ba1–3 provided that notice of withdrawal from registration as a municipal advisor must be filed on Form MA–W, in accordance with the instructions to the form, and set forth other requirements regarding withdrawal of a municipal advisor from registration. The Commission received one comment letter regarding this proposed rule which supported the proposed rule.[1241] The Commission is adopting Rule 15Ba1–4 as it was set forth in proposed Rule 15Ba1–3, with certain minor, technical modifications.[1242] The rule as adopted, however, only applies to municipal advisors registered on Form MA, because the Commission is exempting from registration certain natural persons who are associated persons of a registered municipal advisor and who engage in municipal advisory activities solely on behalf of a registered municipal advisor.[1243]

As with Forms MA and MA–I, Form MA–W must be filed electronically with the Commission.[1244] Form MA–W also constitutes a ''report'' for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*-4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[1245]

Rule 15Ba1–4 also provides that a notice of withdrawal from registration becomes effective for all matters on the 60th day after the filing of the Form MA–W. It may also become effective within a longer time period to which the municipal advisor consents or which the Commission by order determines as necessary or appropriate in the public interest or for the protection of investors, or within a shorter time if the Commission so determines.[1246]

The rule further provides that if a municipal advisor 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 [1247] to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the municipal advisor or if, prior to the effective date of the notice of withdrawal, the Commission institutes such a proceeding or a proceeding to impose terms and conditions upon the withdrawal, the notice of withdrawal will not 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.[1248]

b. Form MA–W

The Commission received one comment letter regarding Form MA–W, which was generally supportive of the form.[1249] As discussed in more detail above,[1250] the Commission is exempting certain natural persons from municipal advisor registration. Accordingly, the Commission is adopting Form MA–W substantially as proposed, but is modifying it solely to remove all references to individual registration of natural persons associated with a municipal advisor and engaged in municipal advisory activities on its behalf and to Form MA–I as an

[1238] *See* SIFMA Letter I.

[1239] Rule 15Ba1–3, under the Proposal, contained the requirements for a municipal advisor to withdraw an existing registration. This provision is being adopted as Rule 15Ba1–4, which is discussed below.

[1240] *See supra* notes 938–939 and accompanying text.

[1241] *See* MSRB Letter I.

[1242] *See* Rule 15Ba1–4, as adopted. The modifications are non-substantive and are limited to updating citations in the rule text or changing the article ''such'' to the article ''the.''

[1243] In the Proposal, the Commission proposed to require natural person municipal advisors to register on proposed Form MA–I and accordingly proposed that these natural person municipal advisors would be required to file a Form MA–W to withdraw from registration with the Commission as a municipal advisor. *See* Proposal, 76 FR 850, 857. As discussed in more detail in Section III.A.2.a. and Section III.A.3., the Commission is adopting an exemption from registration for certain natural persons and Form MA–I will not be an application for registration.

[1244] *See* Rule 15Ba1–4(b).

[1245] *See* Rule 15Ba1–4(d). As a consequence, it will 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.

[1246] *See* Rule 15Ba1–4(c).

[1247] 15 U.S.C. 78*o*–4(c).

[1248] *See* Rule 15Ba1–4(c).

[1249] *See* MSRB Letter I.

[1250] *See supra* note 1243 and *supra* Section III.A.2.a. and Section III.A.3.

application for registration[1251] and to add an introductory direction to refer to the General Instructions for the forms in the MA series before completing Form MA–W. Form MA–W for municipal advisors is designed to be generally consistent with the requirements of Form ADV–W for investment advisers withdrawing from registration. First, Form MA–W requires a municipal advisor to provide identifying information keyed to the identifying information on, and the SEC file number of, the municipal advisor's Form MA. A municipal advisor is required to provide on Form MA–W the name of a principal or employee of the municipal advisor who is authorized to receive information and respond to questions about the Form MA–W. Contact information for a municipal advisor's outside counsel is insufficient.

A municipal advisor filing to withdraw its registration is required to indicate on Form MA–W whether it has received any pre-paid fees for municipal advisory activities that have not been delivered, including subscription fees for publications, and, if so, to specify the amount. In addition, the withdrawing municipal advisor is required to indicate how much money, if any, it has borrowed from clients and has not repaid. If the municipal advisor responds affirmatively to either question, it is required to disclose on Schedule W2 to Form MA–W the nature and amount of its assets and liabilities and its net worth as of the last day of the month prior to the filing of the Form MA–W.

A municipal advisor that is filing to withdraw its registration is required to indicate on Form MA–W whether it has assigned any municipal advisory contracts to another person that engages in municipal advisory activities, and if so, the municipal advisor is required to list in Section 4 of Schedule W1 to Form MA–W each person to whom it has assigned any such municipal advisory contracts and provide the requested information.

A municipal advisor filing to withdraw its registration also is required to indicate whether there are any unsatisfied judgments or liens against it. If the municipal advisor responds affirmatively that it owes money or has any judgments or liens against it, it is required to disclose on Schedule W2 to Form MA–W the nature and amount of its assets and liabilities and its net worth as of the last day of the month prior to the filing of the Form MA–W.

As discussed in the Proposal, the Commission believes that requiring such information from a withdrawing municipal advisor is appropriate for the protection of investors and those persons who do business with municipal advisors.[1252] The filing of Form MA–W and the information contained in the form will provide notice that the municipal advisor is no longer registered and, therefore, is not able to engage in municipal advisory activities without violating federal securities laws.[1253] Additionally, the information provided will alert clients and prospective clients to a municipal advisor's financial stability if the municipal advisor received fees from clients for services not yet delivered, borrowed any money from clients that has not been repaid, or has any unsatisfied judgments or liens at the time of withdrawal because the municipal advisor would be required to disclose the nature and amount of its assets and liabilities and net worth on Schedule W2. This information also will help regulators' investigative and enforcement efforts. Additionally, as noted in the Proposal, an investment adviser that withdraws from registration must supply similar information on its Form ADV–W.[1254]

As discussed below, Rule 15Ba1–8(c), as adopted, requires a municipal advisor withdrawing from registration to preserve its books and records.[1255] Therefore, a municipal advisor filing a Form MA–W is required to list the name and address of each person who has or will have custody or possession of the municipal advisor's books and records and the location at which such books and records are or will be kept. In addition, as discussed above, a withdrawing municipal advisor also is required to identify on Schedule W1 each person to whom it has assigned any of its contracts. As discussed in the Proposal, 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.[1256]

The signatory to the Form MA–W is required to certify, under penalty of perjury, that the information and statements made in the Form MA–W, including any exhibits or other information submitted, are true. If the form is being filed on behalf of a municipal advisor that is not a sole proprietor,[1257] the signature constitutes such certification by both the municipal advisor and the signatory. Similarly, the signatory is required to certify that the municipal advisor's books and records will be preserved and available for inspection as required by law. The signatory is also required to authorize any person having custody or possession of these books and records to make them available to authorized regulatory representatives.

The certification includes a statement that all information previously submitted on the municipal advisor's most recent Form MA (and Form MA–I for sole proprietors) is accurate and complete as of the date the Form MA–W was signed. It also includes 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 (and MA–I for sole proprietors), the information on the Form MA–W will replace the corresponding entry on the municipal advisor's Form MA (and/or MA–I for sole proprietors). As discussed in the Proposal, 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.[1258]

5. Rule 15Ba1–5: Amendments to Form MA and Form MA–I

Proposed Rule 15Ba1–4 set forth requirements regarding when amendments to Form MA and Form MA–I are required and how such amendments must be filed. The Commission received one comment letter regarding this proposed rule which supported the proposed rule.[1259] The Commission is adopting Rule 15Ba1–5 substantially as proposed in Rule 15Ba1–4, but is modifying the rule

[1251] The Commission has removed references in certain instructions that contemplated individual registration of certain natural persons on Form MA–I and that designated Form MA–I as a registration form. Additionally, on the Execution Page, the Commission has also removed the certification for natural person municipal advisors other than sole proprietors.

When a natural person for whom a municipal advisory firm filed a Form MA–I is no longer an associated person or no longer engages in municipal advisory activities on behalf of the firm, the firm must file an amendment to the Form MA–I to indicate this change. *See* General Instruction 2.d. of the General Instructions and *supra* Section III.A.2.c., under sub-heading ''An Associated Person Who Ceases to be Engaged in Municipal Advisory Activities.''

[1252] *See* Proposal, 76 FR 857.

[1253] *See id.*

[1254] *See* 17 CFR 279.2. *See also* Proposal, 76 FR 857.

[1255] *See infra* Section III.C.

[1256] *See* Proposal, 76 FR 857.

[1257] As discussed in the Proposal, in the case of a municipal advisor that is not a sole proprietor, the signatory's certification includes a statement that he or she has signed on behalf of and with the authority of the municipal advisor firm withdrawing the registration. *See id.,* at 857, note 254.

[1258] *See id.,* at 858.

[1259] *See* MSRB Letter I.

primarily to be consistent with the exemption of certain natural persons from municipal advisor registration that the Commission is adopting in Rule 15Ba1–3. Specifically, the Commission's modifications to Rule 15Ba1–5 are limited to removing or revising rule text to reflect that natural persons who are associated with a municipal advisor and engaged in municipal advisory activities on its behalf are not required to register as municipal advisors on Form MA and that Form MA–I is not an application for registration and to update citations in the rule text. Therefore, the requirement in Rule 15Ba1–5 to amend promptly Form MA and Form MA–I applies exclusively to registered municipal advisors since they will be responsible for amendments to their own Form MA and amendments to Form MA–I for each natural person who is a person associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1260]

Rule 15Ba1–5(a) requires that a registered municipal advisor must promptly amend the information in its Form MA: (1) At least annually, within 90 days of the end of the municipal advisor's fiscal year, or of the end of the calendar year for a sole proprietor;[1261] and (2) more frequently than annually if required by the General Instructions.[1262]

In addition to the annual update amendment to Form MA, General Instruction 8 specifies that a municipal advisory firm must amend its Form MA promptly whenever a material event has occurred that changes the information provided in the form. General Instruction 8 further states that, for purposes of Form MA, a material event will be deemed to have occurred if information provided in response to Item 1 (Identifying Information), Item 2 (Form of Organization), or Item 9 (Disclosure Information) becomes inaccurate in any way; or if information provided in response to Item 3 (Successions), Item 7 (Participation or Interest of Applicant, or of Associated Persons of Applicant in Municipal Advisory Client or Solicitee Transactions), or Item 8 (Owners, Officers and Other Control Persons) becomes materially inaccurate.[1263]

In addition, General Instruction 8 provides that a non-resident municipal advisory firm must promptly file an amendment to Form MA to attach an updated opinion of counsel after any changes in the legal or regulatory framework or the firm's physical facilities that would impact its ability, as a matter of law, to provide the Commission with access to its books and records or to inspect and examine the municipal advisory firm.[1264] As the Commission stated in the Proposal,[1265] an amendment in such case 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 [1266] inspection and examination under the new regulatory regime. If a registered non-resident municipal advisory firm becomes unable to comply with this requirement, then this may be a basis for the Commission to institute proceedings to revoke the municipal advisor's registration.

Regarding amendments to Form MA–I, Rule 15Ba1–5(b) provides that a registered municipal advisor must promptly amend the information contained in Form MA–I by filing an amended Form MA–I whenever the information contained in the Form MA–I becomes inaccurate for any reason. As discussed above, registered municipal advisors will be responsible for filing and amending Form MA–I for each natural person associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1267] As discussed in the Proposal, unlike municipal advisors filing Form MA, who must file annual updating amendments, the Commission is not requiring municipal advisory firms to update annually the Forms MA–I for each natural person who is associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1268] The Commission believes that the additional gains obtained by requiring the confirmation of an annual update would impose unnecessary burdens on municipal advisors and that the standard adopted in Rule 15Ba1–5(b) strikes an appropriate balance between maintaining current information regarding natural persons and minimizing the burden on municipal advisors to provide this information.

All amendments to Form MA and Form MA–I are required to be filed electronically with the Commission.[1269] In addition, amendments to Form MA and Form MA–I constitute ''reports'' for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[1270] As discussed in the Proposal, these rules are consistent with the Commission's requirements for other registrants (*e.g.,* national securities exchanges, securities information processors (''SIPs''), broker-dealers) to file updated and annual amendments with the Commission.[1271] The Commission believes that such amendments are important for obtaining updated information for registered municipal advisory firms and their associated natural persons engaged in municipal advisory activities on the firms' behalf so that the Commission can assess whether such persons continue to be in compliance with the federal securities laws and the rules and regulations thereunder.[1272] Obtaining updated information will also assist the Commission in its inspection and examination of municipal advisors and better inform the MSRB's regulation of municipal advisors. In addition, the Commission believes it is important for

[1260] *See* Rule 15Ba1–5(a) and (b).

[1261] *See* Rule 15Ba1–5(a)(1).

[1262] *See* Rule 15Ba1–5(a)(2). *See also infra* Section III.A.8. (discussing the General Instructions and Glossary).

[1263] *See* General Instruction 8 in the Instructions for the Form MA Series. General Instruction 8 further notes that a municipal advisor submitting an amendment between annual updates is not required to update the responses to Item 4 (Information About Applicant's Business), Item 5 (Other Business Activities), Item 6 (Financial Industry and Other Related Affiliations of Associated Persons), or Item 10 (Small Businesses), even if the responses to those items have become inaccurate.

[1264] *See* General Instruction 8 in the Instructions for the Form MA Series. *See also infra* note 1308 and accompanying text. For a discussion of Rule 15Ba1–6 (Consent to Service of Process to be Filed by Non-Resident Municipal Advisors) and Form MA–NR (Designation of U.S. Agent for Service of Process for Non-Residents), *see* Section III.A.6.

[1265] *See* Proposal, 76 FR 858.

[1266] As adopted, General Instruction 8 does not require the opinion of counsel to state that the municipal advisor is able, as a matter of law, to be subject specifically to ''onsite'' inspection and examination.

[1267] *See supra* note 1260 and accompanying text.

[1268] *See* Proposal, 76 FR 858. As discussed in the Proposal, 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 municipal advisors, however, an amendment to Form MA–I is promptly required whenever information previously provided becomes inaccurate. The Commission believes that any additional benefits of an annual update would not justify the burden such a requirement would impose. *See id.*

[1269] *See* Rule 15Ba1–5(c).

[1270] *See* Rule 15Ba1–5(d).

[1271] *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).

[1272] *See* Proposal, 76 FR 858.

municipal entities and obligated persons, as well as the public generally, to have access to current information regarding advisors registered with the Commission.

6. Rule 15Ba1–6: Consent To Service of Process To Be Filed by Non-Resident Registered Municipal Advisors; Legal Opinion To Be Provided by Non-Resident Municipal Advisors; and Form MA–NR

a. Rule 15Ba1–6: Consent To Service of Process To Be Filed by Non-Resident Registered Municipal Advisors; Legal Opinion To Be Provided by Non-Resident Municipal Advisors

Proposed Rule 15Ba1–5 required each non-resident [1273] municipal advisor and each non-resident general partner and managing agent [1274] of a municipal advisor to furnish to the Commission, at the time of filing Form MA or Form MA–I, a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States 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.[1275] Proposed Rule 15Ba1–5 also specified circumstances when each non-resident municipal advisor, general partner and managing agent would be required to amend Form MA–NR. In addition, proposed Rule 15Ba1–5 required that each non-resident municipal advisor, other than a natural person, provide an opinion of counsel that the municipal advisor can provide the Commission with access to the advisor's books and records and submit to onsite inspection and examination by the Commission. The Commission received one comment letter regarding this proposed rule which supported the proposed rule.[1276]

While adopted Rule 15Ba1–6 retains the same purpose and focus of the proposed rule, the Commission is adopting Rule 15Ba1–6 with certain modifications to reflect the Commission's decision to exempt certain natural persons from municipal advisor registration in Rule 15Ba1–3, as adopted, and to clarify and update the rule text as described below. First, the Commission is removing certain references that contemplate individual registration on Form MA–I of natural persons associated persons with a municipal advisor and is revising the rule text to clarify that a municipal advisor is required to file a Form MA–NR for each of its non-resident general partners, managing agents, and associated natural persons engaged in municipal advisor activities on the municipal advisor's behalf. Second, since the term registered municipal advisor no longer includes natural persons who are associated with a municipal advisor and engaged in municipal advisory activity on its behalf, the Commission is adding new language to Rule 15Ba1–6 to address such persons. For example, Rule 15Ba1–6(a)(2) requires a registered municipal advisor, at the time of the Form MA–I filing, to file with the Commission a Form MA–NR for each non-resident natural person associated with a municipal advisor and engaged in municipal advisory activities on its behalf.[1277] Third, the Commission is modifying the rule to require registered municipal advisors to file a new Form MA–NR in the instances where the proposed rule required an amendment because, unlike Form MA and Form MA–I, Form MA–NR is not completed online and signed electronically.[1278] Form MA–NR must be printed out and signed manually and a scanned copy of the signed and notarized form must be attached as a PDF file to the Form MA or Form MA–I being submitted.[1279] Finally, the Commission made other clarifying revisions to and updated the citations in the rule text.[1280]

As discussed in the Proposal,[1281] the provisions in Rule 15Ba1–6, as adopted, are designed to allow the Commission and others to provide service of process to a registered non-resident municipal advisor, a non-resident general partner or managing agent of a registered municipal advisor, and non-resident natural person associated with a municipal advisor and engaged in municipal advisory activities on its behalf by requiring the municipal advisor to file a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States for service of process.[1282] Rule 15Ba1–6 also requires a municipal advisor to file promptly a new Form MA–NR to reflect any change to the name or address of the agent for service of process for itself if the municipal advisor is a non-resident and for each of a municipal advisor's non-resident general partners, managing agents, or natural persons associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1283] The rule further requires a registered non-resident municipal advisor to appoint promptly a successor agent and file a new Form MA–NR if the non-resident municipal advisor discharges its agent or if its agent becomes unwilling or unable to accept service on behalf of the non-resident municipal advisor.[1284] Similarly, Rule 15Ba1–6(c)(2) provides that each registered municipal advisor must require each of its non-resident general partners or non-resident managing agents, or non-resident natural persons

[1273] The definition of ''non-resident'' in Rule 15Ba1–1(j) that the Commission is adopting is substantially similar to the definition of ''non-resident'' that the Commission set forth in proposed Rule 15Ba1–1(h). However, the Commission is modifying this definition so that it includes only those persons residing, having their principal office and place of business, or incorporated in any place not subject to the jurisdiction of the United States. Therefore, persons residing; having their principal office and place of business; and incorporated in the United States or a territory of the United States would not be considered non-residents. Rule 15Ba1–1(j), as adopted, defines ''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 subject to the jurisdiction of 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 subject to the jurisdiction of the United States; or (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 subject to the jurisdiction of the United States.'' As adopted, this definition of ''non-resident'' is similar to 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).

[1274] 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.'' As discussed in the Proposal, 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); and Proposal, 76 FR 859, note 262 and accompanying text.

[1275] *See* Rule 15Ba1–5(a). The agent may not be a Commission member, official, or employee.

[1276] *See* MSRB Letter I.

[1277] Similarly, Rule 15Ba1–6(c)(2), as adopted, sets forth requirements regarding when a registered municipal advisor is required to file a new Form MA–NR for its non-resident natural persons who are associated with the municipal advisor and engaged in municipal advisory activities on its behalf.

[1278] *See* General Instruction 2.c. in the Instructions for the Form MA Series.

[1279] *See id.*

[1280] For example, the Commission removed ''onsite'' from Rule 15Ba1–6(d), as adopted, because the Commission does not conduct all inspections and examinations onsite.

[1281] *See* Proposal, 76 FR 859.

[1282] *See* Rule 15Ba1–6(a)(1) and (2) (requiring a non-resident municipal advisor to file a Form MA–NR on its own behalf and requiring municipal advisors to file a Form MA–NR for each of the municipal advisor's non-resident general partners, managing agents, or natural persons associated with the municipal advisor and engaged in municipal advisory activities on its behalf).

[1283] *See* Rule 15Ba1–6(b).

[1284] *See* Rule 15Ba1–6(c)(1).

associated with the municipal advisor and engaged in municipal advisory activities on its behalf to appoint promptly a successor agent and the registered municipal advisor must file a new Form MA–NR if such non-resident general partner, managing agent, or associated natural person discharges the agent or if the agent is unwilling or unable to accept service on behalf of such person. Rule 15Ba1–6 also requires each non-resident municipal advisor applying for registration to provide an opinion of counsel on Form MA that the municipal advisor can, as a matter of law, provide the Commission with access to the municipal advisor's books and records and that the municipal advisor can, as a matter of law, submit to inspection and examination by the Commission.[1285] Finally, similar to the other forms in the MA series, Form MA–NR must be filed electronically.[1286]

b. Form MA–NR

The Commission received one comment letter on proposed Form MA–NR, which generally supported Form MA–NR.[1287] While Form MA–NR, as adopted, retains the same purpose and focus of the proposed Form MA–NR, the Commission is adopting Form MA–NR with certain modifications. First, the Commission has provided more detailed instructions to improve the form's readability and ease of use. For example, the Commission included an introductory direction to refer to the General Instructions for the forms in the MA series before completing Form MA–NR, a paragraph explaining the purpose of the form, and a specific instruction providing technical guidance for how to attach Form MA–NR to Form MA or Form MA–I. Second, the Commission has expanded its discussion of certain concepts in Form MA–NR so that persons executing the form have a clearer and more complete understanding of the information they are required to provide. For example, Section A of Form MA–NR, as adopted, instructs the person executing the form to ''[i]dentify the agent for service of process for the *non-resident municipal advisor,* for the *non-resident* general partner or managing agent of a *municipal advisor,* or for the *non-resident* natural person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf. Fill in all lines.''[1288] The Commission expanded the discussions in several other parts of Form MA–NR, such as the description relating to the designation and appointment of the agent for service of process immediately following the agent's address and phone number in Section A.2, including language addressing the effect on partnerships of the irrevocable power of attorney appointment and consent to service of process, the designator's certification, and the method by which the designator discloses the capacity in which he or she is signing the form. Third, the Commission has included Section B and Section C in Form MA–NR, as adopted. Section B requires the municipal advisor to obtain the signature of the United States person identified in Section A as the agent for service of process to demonstrate that this person has accepted the designation and appointment as the agent for service of process. This certification that the agent for service of process has accepted the designation and appointment is necessary to ensure effective service of process upon a non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, or non-resident natural person associated with the municipal advisor and engaged in municipal advisory activities on its behalf. Additionally, the Commission believes that the additional burden imposed on municipal advisors to obtain the signature of the U.S. agent for service of process would be minimal. Section C requires the person executing the form to disclose whether any signature is pursuant to a written authorization and whether there is a written contractual agreement or other written document evidencing the designation and appointment of the named agent for service of process and/or the agent's acceptance, and if so, to identify the document and provide an accurate and complete copy with submission of the Form MA or Form MA–I.

Pursuant to General Instruction 2, and consistent with the rule, every non-resident municipal advisor must file Form MA–NR in connection with the municipal advisor's initial application for registration on Form MA and file a new Form MA–NR when required.[1289] In addition, regardless of whether a municipal advisory firm is a resident of the United States, the firm must file a separately completed and executed Form MA–NR for (i) non-resident general partners and managing agents of the firm, and (ii) every non-resident natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf.[1290] Form MA–NR for general partners and managing agents is filed by the firm together with the firm's Form MA.[1291] Form MA–NR for natural persons associated with the firm and engaged in municipal advisory activities on the firm's behalf is filed by the firm together with the Form MA–I relating to the natural person associated with the firm.[1292]

7. Rule 15Ba1–7: Registration of Successor to Municipal Advisor

Proposed Rule 15Ba1–6 was designed to govern the registration of a successor to a registered municipal advisor.[1293]

[1285] *See* Rule 15Ba1–6(d). *See also supra* notes 1264–1265 and accompanying text (discussing when a non-resident municipal advisory firm must file an amendment to Form MA to attach an updated opinion of counsel).

[1286] *See* Rule 15Ba1–6(e).

[1287] *See* MSRB Letter I.

[1288] Section A in Form MA–NR, as proposed, consisted only of ''Name of United States person applicant designates and appoints as agent for service of process'' with space for the name provided in a blank box immediately underneath.

[1289] *See* General Instruction 2.c. As discussed in the Proposal, failure to attach a signed and notarized Form MA–NR, where required, for a non-resident municipal advisor or for any non-resident general partner or managing agent of a municipal advisory firm or non-resident natural person associated with a municipal advisor who engages in municipal advisory activities on behalf of the advisor, may delay SEC consideration of the municipal advisor's application for registration. Additionally, an SEC-registered municipal advisory firm that becomes a non-resident after the municipal advisor firm's initial application has been submitted must file a Form MA–NR within 30 days of becoming a non-resident. The same applies when a general partner or managing agent of a municipal advisory firm becomes a non-resident, or a non-resident becomes a general partner or managing agent of a municipal advisory firm, after the firm's initial application. Also, a municipal advisory firm must file a Form MA–NR together with Form MA–I if, after the firm's initial registration, a non-resident natural person becomes associated with the firm and engages in municipal advisory activities on the firm's behalf. In addition, a municipal advisory firm must file a form MA–NR if a natural person associated with the firm and engaged in municipal advisory activities on behalf of the firm becomes a non-resident after the firm has filed a Form MA–I relating to that individual. The firm must file the Form MA–NR within 30 days of such individual becoming a non-resident. *See* Instruction 3 in the General Instructions to Form MA–NR. *See also* Proposal, 76 FR 859, note 263.

[1290] *See* General Instruction 2.c.

[1291] *See id.*

[1292] *See id.*

[1293] As discussed in the Proposal, the purpose of Rule 15Ba1–7 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. *See* Proposal, 76 FR 860. The 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 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. As discussed in the Proposal, no entity is permitted to

Continued

The rule is substantially similar to Rule 15b1–3 under the Exchange Act, which governs the registration of a successor to a registered broker-dealer.[1294] The Commission received no comments on the proposed Rule 15Ba1–6 and is adopting the rule as Rule 15Ba1–7 without modification.

Succession by Application

Rule 15Ba1–7(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 will be deemed to remain effective as the registration of the successor if the successor, within 30 days after the 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. The rule further provides 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 the successor.[1295] In other words, the 45-day period will 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.[1296]

Succession by Amendment

Rule 15Ba1–7(b) provides that, notwithstanding Rule 15Ba1–7(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 an amendment will be deemed an application for registration filed by the predecessor and adopted by the successor.

In all three types of successions specified in Rule 15Ba1–7(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. As stated in the Proposal, 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.[1297]

8. General Instructions and Glossary

The Commission proposed a set of instructions, which includes general instructions for proper completion and submission of Forms MA, MA–I, MA–W, and MA–NR (''General Instructions''),[1298] as well as specific instructions relating to each of the forms individually, as applicable. A glossary of terms (''Glossary'') is included at the end of the General Instructions to help applicants complete the forms. As discussed in the Proposal, the definitions in the Glossary generally are derived from the terms in Exchange Act Section 15B(e),[1299] the definitions in Rule 15Ba1–1,[1300] and Form ADV.[1301] For ease of reference, the Commission proposed one Glossary to define terms that may appear in any or all of the forms. All terms that are defined or described in the Glossary appear in the forms in italics.

The Commission did not receive any comments on the General Instructions and Glossary and is adopting the General Instructions and Glossary generally as proposed. However, some revisions have been made to clarify or modify instructions and definitions or to provide additional guidance, as discussed more fully below. In particular, the instructions are being revised to reflect that Form MA–I, as adopted, will not serve as a registration form and that municipal advisory firms, rather than natural persons (other than sole proprietors), have the obligation to file and complete Form MA–I. In addition, some sections of the General Instructions have been reorganized to enhance their readability, three new instructions have been added, additional defined terms have been introduced and included in the Glossary, and one term has been removed from the Glossary.

General Instruction 1, as proposed, directed applicants to the Commission's Web site for additional information about the Commission's rules regarding municipal advisors and the Exchange Act. General Instruction 1, as adopted, notes that a comprehensive explanation of the form requirements is provided in this release.

General Instruction 2, as proposed, discussed who should file Form MA and Form MA–I and explained that these forms must be used to register with the Commission and to amend previously submitted Forms MA and MA–I. The instruction also discussed the responsibility of sole proprietors to file both forms. General Instruction 2, as proposed, further included information regarding voluntary registration for certain individuals; the requirement that a Form MA–NR must be submitted for municipal advisors and general partners and managing agents of municipal advisors that are not residents of the United States; and the requirement that a municipal advisor that is no longer required to be registered must file Form MA–W.

As adopted, General Instruction 2 has been revised for clarity and now also provides more details about the use of Form MA. For example, it now notes the requirement for a municipal advisor that registers on Form MA to submit an annual update of that form.[1302]

General Instruction 2 has been revised to reflect the fact that Form MA–I is no longer a registration form. It explains that municipal advisory firms must complete and file Form MA–I on behalf of natural persons associated with the firm and engaged in municipal advisory activities on behalf of the firm, including employees of the firm. In

rely on Rule 15Ba1–7 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. *See* General Instruction 1 to Form MA.

The Commission will not apply Rule 15Ba1–7 to a reorganization that involves only registered municipal advisors. *See* Proposal, 76 FR 860. In those situations, the registered municipal advisors need not rely on the rule because they can continue to rely on their existing registrations. The rule also will 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.

[1294] *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).

[1295] *See* Rule 15Ba1–7(a).

[1296] *See* 15 U.S.C. 78*o*–4(a)(2).

[1297] *See* Proposal, 76 FR 860.

[1298] Form MA–W is for withdrawal from registration as a municipal advisor, and Form MA–NR is for the appointment of an agent for service of process by a non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, or non-resident natural person associated with a municipal advisor and engaged in municipal advisory activities on behalf of the municipal advisor. *See supra* Sections III.A.4.b. and III.A.6. (discussing Forms MA–W and MA–NR, respectively).

[1299] *See* 15 U.S.C. 78*o*–4(e).

[1300] *See* Rule 15Ba1–1. *See also* Proposal, 76 FR 839.

[1301] *See* 17 CFR 279.1.

[1302] The instruction, as proposed, referred only to amendments, which may have implied that additional filings are required only in the instance of changes in the information provided on previously-submitted forms.

addition, General Instruction 2 notes that independent contractors are included in the definition of ''employee'' of a municipal advisor for purposes of a firm's obligation to complete and file Form MA–I.[1303] The instruction explains that Form MA–I is also used to amend a previously submitted Form MA–I.

With regard to Form MA–NR, General Instruction 2 now more clearly indicates that every municipal advisory firm must file with the firm's Form MA a separately completed and executed Form MA–NR for every general partner and/or managing agent of a firm that is a non-resident. In addition, the instruction has been revised to indicate that municipal advisory firms must also file Form MA–NR for every non-resident natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf together with the Form MA–I related to the person. General Instruction 2 indicates that firms have an obligation to file Form MA–NR in these circumstances, regardless of whether the firm itself is domiciled in the United States or is a non-resident filing a Form MA–NR on its own behalf. In addition, General Instruction 2 clarifies that a Form MA–NR for a non-resident general partner or managing agent of a municipal advisor must be filed with the Form MA of the municipal advisor. The instruction, as adopted, also explains that, unlike the other forms in the Form MA series, which are completed online and signed electronically, Form MA–NR must be printed out and signed manually by both the non-resident and the person designated as agent for service of process. Each of the signatures must be separately notarized, and a scanned copy of the signed and notarized form must then be attached as a PDF file to the electronically-completed Form MA or Form MA–I. To emphasize the importance of submitting a Form MA–NR, where required, General Instruction 2, as adopted, includes a warning that failure to attach a signed and notarized Form MA–NR for a non-resident municipal advisor, any non-resident general partner or managing agent of a municipal advisory firm, or non-resident natural person associated with a municipal advisory firm who engages in municipal advisory activities on behalf of the firm may delay Commission consideration of the municipal advisor's application for registration.

General Instruction 2 indicates that Form MA–W does not need to be completed when a natural person with respect to whom a municipal advisory firm filed Form MA–I is no longer associated with the firm or no longer engaged in municipal advisory activities on behalf of the firm. The instruction now explains that the firm must indicate this change by filing an amendment to Form MA–I.

The proposed instructions in General Instruction 2 regarding voluntary registration as a municipal advisor have been deleted, as the purpose for which this option was created is no longer relevant.[1304]

General Instruction 3, as proposed, instructed applicants 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 DRPs) and made clear that an applicant must complete all items in Form MA. General Instruction 3 is being adopted substantially as proposed, with only minor revisions, including an explanation that Form MA includes an ''Execution Page'' where the form is signed.

General Instruction 4, as proposed, provided comparable instructions with respect to the organization and completion of Form MA–I and the schedules and the DRPs required by that form. General Instruction 4 is being revised to state that Form MA–I asks questions about sole proprietors and natural persons associated with a municipal advisory firm and engaged in municipal advisory activities on behalf of the firm, and to reflect the fact that Form MA–I, as adopted, is not a registration form.

General Instructions 5–7 are being adopted substantially as proposed, with revisions to reflect the fact that municipal advisory firms, not natural persons associated with the firms and engaged in municipal advisory activities on behalf of the firms, must sign and file Form MA–I. However, the order of these instructions has been rearranged in their adopted version for purposes of clarity.

First, General Instruction 5 (in the order as adopted) sets forth who must sign Form MA or MA–I. General Instruction 5 explains that such person will be a 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.[1305] It further makes clear that in all cases the signature should be a typed name. Next, General Instruction 6 makes clear where Form MA must be signed, explaining that domestic municipal advisors are required to execute the Domestic Execution Page to Form MA, while non-resident municipal advisors are required to execute the Non-Resident Municipal Advisor Execution Page.[1306] General Instruction 7 provides that a municipal advisory firm signs Item 7 of Form MA–I.

General Instructions 8 and 9 discuss when to amend and/or update Forms MA and MA–I respectively, as discussed above.[1307] General Instruction 8 (which pertains to Form MA), has been adopted substantially as proposed, but has been revised to distinguish more clearly between an amendment and an annual update. To clarify how amendments and updates will work in the electronic filing system, the instruction also now explains that each time a firm accesses its Form MA after its initial filing of the form, the

[1303] Although independent contractors are included in the definition of employee for purposes of these forms in the Glossary (as both proposed and adopted), their inclusion is noted in General Instruction 2, as adopted, because it might otherwise be overlooked.

[1304] The Commission notes that several commenters raised concerns regarding the interaction of the Commission's proposed rule regarding voluntary municipal advisor registration with amendments that had been proposed in November 2010 to the Commission's ''Pay-to-Play Rule.'' *See, e.g.,* ICI Letter and MFA Letter. *See also* Investment Advisers Act Release No. 3010 (November 10, 2010), 75 FR 77052 (December 10, 2010) (Pay-to-Play Proposed Amendments); and Proposal, 76 FR 832 n.104 and accompanying text. The Commission notes that it adopted amendments to its Pay-to-Play Rule on June 22, 2011. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011). As proposed, the amendments to the Pay-to-Play Rule would have excepted *only* registered municipal advisors from that rule's ban on compensating third-party solicitors. If the amendments had been adopted as proposed, an investment adviser may have been unable to hire an affiliated solicitor to solicit government entities on its behalf (absent the option for voluntary municipal advisor registration) because affiliated solicitors would not fall within the statutory definition of municipal advisor. The final amendments to the Pay-to-Play Rule, however, permit advisers to compensate municipal advisors *and* Commission registered investment advisers and broker-dealers for soliciting government entities if they are subject to restrictions substantially equivalent to or more stringent than the Pay-to-Play Rule. *See id. See also* Rule 206(4)–5 under the Investment Advisers Act (17 CFR 275.206(4)(5)). Consequently, the option of voluntary registration as a municipal advisor for persons undertaking solicitation of a municipal entity is no longer necessary.

[1305] Because natural persons that are not sole proprietors are not required to file Form MA–I, the part of General Instruction 5 set forth in the Proposal that stated that a natural person filing Form MA–I on his or her own behalf must sign the form has been deleted.

[1306] *See supra* Section III.A.6. (discussing Rule 15Ba1–6 and Form MA–NR).

[1307] *See supra* Section III.A.5.

information from the firm's most recent previous filing will appear. Only the information that has changed will need to be amended; the applicant will not need to complete the entire form again. The statement in General Instruction 8 regarding the requirement for a non-resident municipal advisor to amend its form and attach an updated opinion of counsel has been revised to more accurately reflect the required content of the opinion of counsel as stated on Form MA.[1308] General Instruction 9, as proposed, concerned when Form MA–I (for natural person municipal advisors) needs ''to be updated.'' The instruction has been revised in its adopted form to state generally that Form MA–I must ''be amended'' whenever information previously provided on the form becomes inaccurate.[1309]

General Instruction 10, as proposed, provided that an applicant must complete and file the forms electronically. As adopted, General Instruction 10 provides that a municipal advisor must complete and submit the relevant form, including any required attachments, electronically. General Instruction 10 reflects the change to Rule 15Ba1–2(c), as adopted,[1310] that Form MA is considered filed upon submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–I (17 CFR 249.1310), to EDGAR. General Instruction 10 also explains that when a municipal advisor's submitted Form MA is accepted by the Commission, the municipal advisor will receive an SEC file number. General Instruction 11 is being adopted to provide more specific information about how to electronically file the forms in the Form MA series and, specifically, how to obtain access to EDGAR to do so.[1311]

A new General Instruction 12 has been added to the General Instructions, as adopted, to clarify what a municipal advisor (or, in the case of a firm, its authorized representative) represents by signing and executing the form as a whole.[1312] General Instruction 12 explains that, by signing the Execution Page of Form MA, the authorized signatory of a domestic municipal advisory firm is appointing the Secretary of State or other legally designated officer of the state in which the firm maintains its principal office and place of business as the firm's agent to receive service of process.[1313] The signatory is also attesting to the truth and correctness of the information provided in the form and declaring that the firm's books and records will be preserved and available for inspection and that any person having custody of the books and records is authorized to make them available to federal regulators.

General Instruction 12 further explains that a signatory on behalf of a non-resident municipal advisory firm must use the version of the Execution Page of Form MA that is specifically required for non-resident firms. Besides attesting to the truth and correctness of the information provided on the form and making the same representations as a U.S. firm regarding books and records, the signatory on behalf of the firm is agreeing to provide, at the firm's own expense, current, correct, and complete copies of its books and records to the SEC upon request. The instruction explains that a non-resident firm must designate an agent for service of process on a separate form, Form MA–NR.

General Instruction 12 explains that an authorized signatory of a domestic municipal advisory firm filing Form MA–I with respect to a natural person who is associated with the firm and engaged in municipal advisory activities on behalf of the firm, by signing the Execution Page of Form MA–I, is attesting to the truth and correctness of the information provided in the form. The instruction also explains that the authorized signatory is attesting that the firm has obtained and retained written consent from the natural person associated with the firm that service of any civil action brought by, or notice of any proceeding before, the SEC or any SRO in connection with the individual's municipal advisory activities may be given by registered or certified mail to the individual's address provided in Item 1 of the form.

General Instruction 12 further explains that by signing the Execution Page of Form MA–I, a sole proprietor filing Form MA–I is consenting that service of process may be given by registered or certified mail to the address the sole proprietor has supplied in Item 1 of the form and is also attesting to the truth and correctness of the information he or she has provided in the form.

General Instruction 13, as adopted, (General Instruction 14 as proposed) discusses the requirement for a non-resident municipal advisory firm to attach a legal opinion to its Form MA that the municipal advisor can, as a matter of law, provide the Commission with access to its books and records and that the municipal advisor can, as a matter of law, submit to inspection and examination by the Commission.[1314] As adopted, General Instruction 13 reflects the fact that the opinion of counsel that non-residents must file no longer needs to state that the municipal advisor can submit to ''onsite'' inspection and examination.[1315]

The Commission has also added new General Instruction 14 to list together in one place all the circumstances in which additional documents must be attached to a Form MA or Form MA–I. The list of such documents does not include any new requirements that were not included in the Proposal. General Instruction 14 has been added for purposes of clarity and convenience. The required documents enumerated include: (1) any documents relating to criminal actions, as specified in the Criminal Action DRPs of Form MA and Form MA–I, and any other supporting documentation; (2) a manually-signed Form MA–NR for each non-resident for whom such form is required;[1316] (3) any written document (*e.g.,* board resolution or power of attorney) authorizing a signatory to sign a Form MA–NR; and (4) any written contractual agreements relating to Form MA–NR; and (5) the required opinion of counsel for non-resident municipal advisory firms.

The Commission has added new General Instruction 15 to provide clarity

[1308] *See supra* note 1264 and accompanying text for the revised language.

[1309] The instruction no longer states that every ''natural person municipal advisor'' must amend Form MA–I because the rule, as adopted, requires municipal advisory firms, and not natural persons (other than sole proprietors), to complete and file Form MA–I. *See* Rule 15Ba1–2(b)(1) of the adopted rules.

[1310] *See supra* note 971 and accompanying text.

[1311] *See supra* note 961. General Instructions 12 and 13 as proposed, regarding self-certification by municipal advisors filing on Form MA and Form MA–I, have been removed, because, as discussed above, the Commission has eliminated the self-certification requirement in Form MA and Form MA–I as adopted.

[1312] General Instruction 12 does not introduce new substantive requirements that are being added in the adopting phase of this rulemaking. They were set forth in the forms, as proposed, and are now being added to the General Instructions in order to highlight them for applicants preparing to file. *See also supra* notes 1150–1156 and accompanying text.

[1313] *See also supra* notes 1275–1287 and accompanying text.

[1314] *See supra* note 1154 and accompanying text.

[1315] *See supra* note 1280 and accompanying text.

[1316] Form MA–NR, by which a non-resident municipal advisor designates an agent for service of process in the U.S., is accessed electronically via links within Form MA and Form MA–I. The information requested by the form may be entered online. However, the form must be printed out and signed manually—both by the applicant (an authorized signatory in the case of a firm) and by the designated agent for service of process—and each of the signatures must be notarized. After the signatures and notarizations are completed, Form MA–NR must be attached in PDF format to the Form MA or Form MA–I.

with respect to filing deadlines. General Instruction 15 provides that if the deadline for submitting an initial filing, annual update, or amendment to a form occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the deadline shall be the next business day.

The General Instructions also provide some instructions and explanations specific to certain items in Form MA and Form MA–I.[1317] In addition, the General Instructions provide some instructions and explanations specific to Form MA–NR. Specific Instruction 1 for Form MA, as adopted, explains that a municipal advisor that is not currently registered as a municipal advisor and has taken over the business of another municipal advisor or was registered as a municipal advisor but has changed its structure or legal status will be a new organization with registration obligations under the Exchange Act.[1318] It further explains that an applicant not registered with the SEC as a municipal advisor that is acquiring or assuming substantially all of the assets and liabilities of the advisory business of a registered municipal advisor will be required to file a new application for registration on Form MA within 30 calendar days after the succession. The instruction also provides that, once the new registration is effective, Form MA–W (as described above) must be filed to withdraw the registration of the acquired municipal advisor. The instruction also explains that, if a new municipal advisor is formed solely as a result of a change in the form of organization or in the composition of a partnership or the date or the state of incorporation, and there has been no practical change in control or management, the applicant will be permitted to amend the existing registration to reflect the changes by filing an amendment within 30 calendar days after the change or reorganization.

Specific Instruction 2 for Form MA is being adopted substantially as proposed and has been revised only for clarity and to correct certain citations that have changed. The instruction provides guidance for newly-formed municipal advisors regarding how to respond to several questions in Item 4 of Form MA (described above) that may be difficult to answer when the applicant for registration has not been in existence for a significant amount of time. The instruction advises that, for a newly-formed municipal advisor, responses should reflect the applicant's current municipal advisory activities (*i.e.,* its activities at the time of filing, with certain exceptions). With respect to specified questions regarding the applicant's compensation arrangements, the instructions provide that the applicant base its responses on the types of compensation it expects to accept. Further, with respect to its business activities relating to municipal securities, the applicant is instructed to base its responses on the types of municipal advisory activities in which it expects to engage during the next year.

Specific Instruction 3 for Form MA is being adopted substantially as proposed, with non-substantive revisions. The instruction explains 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.

The Specific Instructions for Certain Items in Form MA–I, as adopted, have been revised to reflect the fact Form MA–I is not a registration form and that municipal advisory firms, rather than natural persons (other than sole proprietors), have the obligation to complete and file Form MA–I. Specific Instruction 1 for Form MA–I explains that, in Item 1 of Form MA–I, the municipal advisory firm must enter the individual's CRD Number (if assigned), the individual's social security number,[1319] and the addresses of all offices at which the individual is or will be physically located or from which the individual is or will be supervised, even if the individual does not work at that location.[1320]

Specific Instruction 2 for Form MA–I is being adopted substantially as proposed, with revisions made for clarity. The instruction emphasizes that, for purposes of completing Item 2 to Form MA–I, the firm must enter all the other names that the individual is using, has used, is known or has been known by, other than the individual's legal name, since the age of 18, which includes nicknames, aliases, and names used before and after marriage.

Specific Instruction 3 for Form MA–I is being adopted substantially as proposed, but expanded with more information. The instruction explains that, for purposes of Item 3, with respect to the individual's residential history for the past 5 years, post office boxes may not be used to complete the response and the firm may not leave any gaps in the individual's residential history greater than three months. As adopted, this instruction also includes the statement: ''This information is needed for regulatory purposes. However, the version of completed Form MA–I that will be available for viewing by the public will not show the private residential addresses that you enter.''

Specific Instruction 4 for Form MA–I is being adopted substantially as proposed, with an added clarification. The instruction provides that, with respect to Item 4 of Form MA–I, the individual's employment history for the past 10 years must be provided with no gaps greater than three months; 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. The added clarification explains that such statuses should be entered on the line provided for ''Name of Municipal Advisor or Company.''

Specific Instruction 5 for Form MA–I, regarding Item 5 of Form MA–I (''Other Business''), has been revised in its adopted version. Instead of restating, as proposed, some of the information requests specified in Item 5, the instruction explains that other businesses in which the individual ''is engaged'' is intended to capture such engagements as a proprietor, partner, officer, director, or employee (including independent contractor, trustee, agent or otherwise). As adopted, the instruction also informs firms that if the number of hours per week that individuals devote to the other business varies, the firms should provide an average.

Specific Instruction 6 for Form MA–I, regarding Item 6 of Form MA–I, is being adopted as proposed. The instruction advises firms that affirmative responses to certain disclosure questions in the form could make an individual subject to a statutory disqualification.

Specific Instruction 7 for Form MA–I is being adopted as proposed, with an

[1317] As proposed, the sections of the General Instructions that explained how to complete certain items in Form MA and Form MA–I did not have names. As adopted, these sections are now called ''Specific Instructions for Certain Items in Form MA'' and ''Specific Instructions for Certain Items in Form MA–I.''

[1318] Specific Instruction 1 for Form MA as adopted has been significantly revised for purposes of clarity but includes no substantive changes. *See also infra* Section III.A.7, regarding Rule 15Ba1–7, adopted as part of this rulemaking, upon which this instruction is based.

[1319] As discussed above, social security numbers will 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. 78*o*–4(c)). *See* Proposal, 76 FR 840, note 171.

[1320] General Instruction 1 to Form MA–I in its adopted form has been expanded to provide more explanation for a firm that submits Form MA–I on behalf of natural persons associated with the firm and engaged in municipal advisory activities on the firm's behalf, but no new requirements have been added.

added reminder for non-residents. The instruction indicates that, as with Form MA, the form is to be signed (in Item 7 of Form MA–I) by typing a signature in the designated field and makes 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. The added reminder advises the firm that if the individual is a non-resident, the firm must attach a manually-signed Form MA–NR to the form.

The General Instructions contain a new section called ''General Instructions to Form MA–NR'' that consists of instructions and explanations specific to Form MA–NR. General Instruction 1 to Form MA–NR repeats the information in General Instruction 2, discussed above, regarding when Form MA–NR must be filed.

General Instruction 2 to Form MA–NR describes the circumstances in which more than one Form MA–NR must be filed by a municipal advisory firm. For example, the instruction states that a non-resident municipal advisory firm filing a Form MA for itself would also need to file Form MA–NR for each of its non-resident general partners and managing agents, even if a Form MA–NR had been previously filed by another municipal advisor for the general partner or managing agent. In addition, a firm filing Form MA–I must attach Form MA–NR for every non-resident natural person associated with the firm and engaged in municipal activities on the firm's behalf.

General Instruction 3 to Form MA–NR describes when a Form MA–NR must be filed at times other than when a municipal advisor submits its initial application for registration. The instruction explains that a registered municipal advisory firm must file a Form MA–NR within 30 days of the firm becoming a non-resident. The same applies when a general partner or managing agent of the municipal advisory firm becomes a non-resident, or a non-resident becomes a general partner or managing agent of the firm after the firm's initial application for registration. In such cases, the municipal advisor must file an amendment to Form MA with the new Form MA–NR attached. The instruction explains that a municipal advisory firm must also file Form MA–NR with Form MA–I if, after the firm's initial registration, a non-resident natural person becomes associated with the firm and engages in municipal advisory activities on the firm's behalf. In addition, a firm must file Form MA–NR if a natural person associated with the firm and engaged in municipal advisory activities on behalf of the firm becomes a non-resident after the firm has filed Form MA–I relating to that individual. The firm must file Form MA–NR within 30 days of the individual becoming a non-resident.[1321]

General Instruction 4 to Form MA–NR describes when a new Form MA–NR must be filed. The instruction indicates that a new Form MA–NR must be filed promptly if a previously-filed Form MA–NR becomes invalid or inaccurate.[1322] This includes any change to the name or address of the non-resident municipal advisory firm, general partner, managing agent, or natural person associated with the firm and engaged in municipal advisory activities on behalf of the firm, or any change to the name or address of the agent of service of process of such non-resident, to which the previously-filed Form MA–NR relates. The instruction explains that a non-resident must promptly appoint a successor agent for service of process and the municipal advisor must file a new Form MA–NR if the non-resident discharges its identified agent for service of process or if its agent for service of process becomes unwilling or unable to accept service on behalf of the non-resident.

In the Proposal, the term ''non-resident'' was defined as an individual, corporation, or partnership or other unincorporated organization or association that resides in or has his or its principal office and place of business in ''any place not in the United States.'' As adopted, the language in the term ''non-resident'' that determines whether an individual, corporation, or partnership or other unincorporated organization or association is a ''non-resident'' has been slightly modified to whether the person resides in or has his or its principal office and place of business in ''any place not subject to the jurisdiction of the United States.'' The language has been changed to clarify that persons that reside or have their principal office and place of business in United States territories do not fall within the definition of ''non-resident.''

The Glossary of Terms is being adopted substantially as proposed. However, the Glossary, as adopted, contains some revisions that are being made for clarity. As adopted, the Glossary includes some revisions to terms that reflect changes to the definitions being adopted in Rule 15Ba1–1. For example, the definition of ''Guaranteed Investment Contract'' has been revised to clarify that the contract at issue must relate to investments of proceeds of municipal securities or municipal escrow investments. The definition of the term ''municipal advisor,'' as adopted, has been revised to make clear that the definition is subject to the exclusions that are being adopted under Rule 15Ba1–1(d)(2)[1323] and the exemptions under Rule 15Ba1–1(d)(3).[1324] Likewise, the definition of the term ''obligated persons,'' consistent with the definition in adopted Rule 15Ba1–1, has been revised to state that the term does not include a person whose financial information or operating data is not material to a municipal securities offering or the federal government. The Glossary contains other revisions to terms that are consistent with revisions to the definitions in Rule 15Ba1–1, as adopted.

The Glossary includes some new definitions that were not in the Proposal. For example, the Glossary now defines the term ''federal regulatory agency'' to include any federal banking agency and the National Credit Union Administration. The Glossary also defines the term ''state regulatory agency'' to include any State securities commission (or any agency or officer performing like functions); State authority that supervises or examines banks, savings associations, or credit unions; or State insurance commission (or any agency or office performing like functions to the above). The definitions of the terms ''federal regulatory agency'' and ''state regulatory agency'' are consistent with the language in Exchange Act Section 15(b)(4)(H).[1325] The Glossary has also been revised to include a new definition of the term ''affiliate, affiliated, affiliation,'' which is derived from the definition of ''advisory affiliate'' for Form ADV.

The term ''natural person municipal advisor'' has been removed from the Glossary, as adopted. In the Proposal,

[1321] General Instruction 3 to Form MA–NR also contains a note reminding non-resident municipal advisory firms of two additional requirements for non-resident municipal advisory firms that are discussed in General Instruction 12 (to complete Form MA Execution Page for non-residents and the undertaking regarding books and records) and General Instruction 13 (to attach an opinion of counsel that the firm can provide the Commission with access to its books and records and can submit to inspection and examination by the Commission).

[1322] A new Form MA–NR is filed by submitting an amendment to Form MA with a new Form MA–NR attached.

[1323] 17 CFR 240.15Ba1–1(d)(2).

[1324] 17 CFR 240.15Ba1–1(d)(3).

[1325] The statutory disqualification language of Section 15(b)(4)(H) is referenced in Exchange Act Section 15B(c)(2), which describes the Commission's power to censure, place limitations on the activities, functions, or operations, or suspend, or revoke the registration of a municipal advisor.

the term was defined to mean any natural person that is a municipal advisor, including sole proprietors. The term had been included in the Proposal to collectively describe natural persons who were required to file Form MA–I. Because municipal advisory firms, rather than natural persons (other than sole proprietors), are now responsible for filing Form MA–I, the term is no longer necessary, and is therefore being removed from the Glossary.

9. Rule 15Bc4–1: Persons Associated With Municipal Advisors

As noted in the Proposal, 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. As discussed in the Proposal, however, it appears that a technical error was made in the final draft of this provision.[1326] Specifically, Section 975(c)(5) of the Dodd-Frank Act provides that Section 15B(c)(4) of the Exchange Act be amended ''by inserting 'or municipal advisor' after 'municipal securities dealer or obligated person' each place that term appears.'' [1327] At the time the Dodd-Frank Act was enacted, however, Section 15B(c)(4) of the Exchange Act included the term ''municipal securities dealer,'' but did not include the phrase ''municipal securities dealer *or obligated person''* (emphasis added).

To address any ambiguity created by this error, the Commission stated in the Proposal its intent to recommend a technical amendment to Section 975(c)(5) of the Dodd-Frank Act.[1328] To date, however, the Exchange Act has not been amended to correct this technical error. Therefore, to clarify the Commission's interpretation of Section 15B(c)(4) of the Exchange Act, the Commission is adopting new Rule 15Bc4–1 to make clear the Commission's understanding of its authority with respect to associated persons of municipal advisors. Specifically, Rule 15Bc4–1 states that the Commission has the authority to, by order, censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal advisor, or suspend for a period not exceeding 12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of Section 15(b) of the Exchange Act, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under section 15B(c)(4) of the Exchange Act, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of Section 15(b)(4). Rule 15Bc4–1 also states the Commission's interpretation that Section 15B(c)(4) of the Exchange Act makes it unlawful for any person, as to whom an order is entered pursuant to Section 15B(c)(4) or Section 15B(c)(5) of the Exchange Act suspending or barring him from being associated with a municipal advisor is in effect, willfully to become, or to be, associated with a municipal advisor without the consent of the Commission. Further, Rule 15Bc4–1 sets forth the Commission's understanding that it is unlawful for any municipal advisor to permit such a person to become, or remain, an associated person without the consent of the Commission, if such municipal advisor knew, or, in the exercise of reasonable care should have known, of such order. Not only does the Commission believe that such interpretation is the only one that is consistent with the Congressional intent underlying Section 975(c)(5) of the Dodd-Frank Act, and that any other reading would produce the absurd result that no amendment would be made to Section 15(c)(4) of the Exchange Act, but the Commission also believes that this interpretation and the adoption of Rule 15Bc4–1 are necessary and appropriate to ensure that the Commission may 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.

B. Approval or Denial of Registration

As discussed in the Proposal,[1329] Exchange Act Section 15B(a)(2) provides that within forty-five days of the filing of an application to register as a municipal advisor,[1330] 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.'' [1331]

In accordance with Exchange Act Section 15B(a)(2), the Commission will grant the registration of a municipal advisor if the Commission finds that the requirements of Section 15B of the Exchange Act are satisfied. The Commission will deny the registration of a municipal advisor if the Commission does not make such a 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.[1332]

As discussed in the Proposal, the information currently required by 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.[1333] The Commission intends that the permanent registration process will entail a review of each filed Form MA.

In considering whether to grant an application for registration as a municipal advisor, the Commission will review the information provided on Form MA. For example, as discussed in the Proposal, 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.[1334] Also, the Commission may review the disclosures required by Item 9 of Form MA, including the disciplinary history of an applicant.[1335] In addition, as discussed

[1326] *See* Proposal, 76 FR 850, n.233.

[1327] *See* Section 975(c)(5) of the Dodd-Frank Act.

[1328] *See* Proposal, 76 FR 850, n.233.

[1329] *See id.,* at 860.

[1330] The statute allows for a longer period if the applicant consents. *See* 15 U.S.C. 78*o*–4(a)(2).

[1331] *See* 15 U.S.C. 78*o*–4(a)(2).

[1332] *See* 15 U.S.C. 78*o*–4(c).

[1333] *See* Proposal, 76 FR 860.

[1334] *See id.*

[1335] *See id.*

in the Proposal, the municipal advisor registration process will allow the Commission and staff to ask questions and, as needed, to request amendments before granting an application for registration.[1336]

C. Rule 15Ba1–8: Books and Records To Be Made and Maintained by Municipal Advisors

Section 17(a)(1) of the Exchange Act provides, in pertinent part, that all registered municipal advisors 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 Exchange Act.[1337] With proposed Rule 15Ba1–7, the Commission proposed to specify the books and records requirements applicable to municipal advisors.[1338] The Commission is adopting Rule 15Ba1–7 as proposed, but renumbered as Rule 15Ba1–8, with a few technical clarifications, the addition of general ledgers, and the addition of written consents to service of process from certain natural persons.

Record-Keeping for Municipal Advisors

As discussed in the Proposal, the Commission based Rule 15Ba1–7(a) (as adopted, Rule 15Ba1–8(a)) generally on the books and records requirements for broker-dealers and investment advisers.[1339] Rule 15Ba1–8(a), among other things, requires a municipal advisory firm to make and keep true, accurate, and current certain books and records relating to its municipal advisory activities.[1340] Specifically, Rule 15Ba1–8(a) requires all municipal advisory firms to make and keep 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 the communications.[1341] Municipal advisory firms also must keep all check books, bank statements, general ledgers,[1342] cancelled checks, and cash reconciliations; a copy of each version of the municipal advisor's policies and procedures, if any, that (i) are in effect or (ii) at any time within the last five years were in effect (not including those in effect prior to the effective date of Rule 15Ba1–8); and a copy of any document created by the municipal advisor that was material to making a recommendation to a municipal entity or obligated person that memorializes the basis for that recommendation. In addition, a municipal advisory firm must keep 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 the municipal advisor as such. Further, a municipal advisory firm is required to keep a record of the names of persons who are, or have been in the past five years, associated with the municipal advisor (not including persons associated with the municipal advisor prior to the effective date of Rule 15Ba1–8); names, titles, and business and residence addresses of all persons associated with the municipal advisor;[1343] 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 (not including those prior to the effective date of Rule 15Ba1–8); the name and business address of each person to whom the municipal advisor provides or agrees to provide payment to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf; and the name and business address of each person that provides or agrees to provide payment to the municipal advisor to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf.[1344] Finally, a municipal advisory firm must keep written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.[1345]

Rule 15Ba1–8(b)(1) requires municipal advisory firms to maintain and preserve all books and records required to be made for a period of not less than five years, the first two years in an easily accessible place. Further, corporate governance documents, such as articles of incorporation and stock certificate books of the municipal advisor, and those of any predecessor, excluding those that were only in effect prior to the effective date of Rule 15Ba1–8, must 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.

As discussed in the Proposal, Rule 15Ba1–7(d) (as adopted, Rule 15Ba1–8(d)) is modeled on Rule 204–2 under the Investment Advisers Act.[1346] Specifically, Rule 15Ba1–8(d) permits, and sets forth the requirements for, electronic storage of the records required to be maintained and preserved pursuant to Rule 15Ba1–8. The rule further sets forth requirements with respect to the prompt [1347] provision of

[1336] *See id.*

[1337] *See* 15 U.S.C. 78q(a)(1).

[1338] *See* Proposal, 76 FR 860–862. In addition, Section 15B(b)(2)(G) of the Exchange Act 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. 78*o*–4(b)(2)(G).

[1339] *See* Proposal, 76 FR 861, note 274 and accompanying text.

[1340] Therefore, the books and records listed in Rule 15Ba1–8(a) are limited to those relating to a municipal advisor's municipal advisory activities.

[1341] As discussed in the Proposal, materials posted on a municipal advisor's Web site relating to municipal advisory activities are written communications sent by the municipal advisor for purposes of this provision. *See* Proposal, 76 FR 861, note 275. The Commission notes that written communications may be in electronic form, such as emails or instant messages. Further, as discussed above, in determining whether or not funds to be invested constitute proceeds of municipal securities for purposes of Rule 15Ba1–1(m), a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance. *See* Rule 15Ba1–1(m)(3). Similarly, in determining whether or not funds to be invested or reinvested constitute municipal escrow investments for purposes of Rule 15Ba1–1(h), a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance. *See* Rule 15Ba1–1(h)(2). Such representations provided by the municipal entity or obligated person official constitute written communications received by a municipal advisor relating to municipal advisory activities.

[1342] As discussed below in this section, the Commission is including ''general ledgers'' in the final books and records rule.

[1343] The Commission notes that this provision does not cover persons who were previously and are no longer associated with the municipal advisor.

[1344] Proposed Rule 15Ba1–7 also required municipal advisory firms to make and keep a record of the initial or annual review, as applicable, conducted by the municipal advisory firm of its business in connection with its self-certification on Form MA. Because the Commission is not adopting a self-certification requirement, the Commission is also not adopting this corresponding books and records requirement.

[1345] As discussed below in this section, the Commission is including ''written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor'' in the final books and records rule.

[1346] *See* 17 CFR 275.204–2. *See also* Proposal, 76 FR 861.

[1347] For purposes of Rule 15Ba1–8(d), the Commission interprets the term ''prompt'' to mean making reasonable efforts to produce records that are requested by the staff during an examination without delay. The Commission believes that in

records upon request by the Commission or by its staff or other representatives. In addition, Rule 15Ba1–8(e) provides that any books or records made, kept, maintained, and preserved in compliance with Rules 17a–3 and 17a–4 under the Exchange Act, rules of the MSRB, or Rule 204–2 under the Investment Advisers Act, which are substantially the same as the books and records required to be made, kept, maintained, and preserved under Rule 15Ba1–8, will satisfy the record-keeping requirements under Rule 15Ba1–8.[1348] Subparagraph (e) of Rule 15Ba1–8 is designed to minimize the record-keeping burden for municipal advisory firms that are otherwise subject to similar record-keeping requirements.[1349]

In the Proposal, the Commission requested comment on the proposed books and records requirements. Specifically, the Commission requested comment regarding, among other things, the types of documents and data that should be retained; whether it is appropriate for the books and records requirements to be based on the books and records requirements for broker-dealers and investment advisers; the length of the period for maintaining and preserving books and records; the format of the records retained; and whether the proposed requirements are overly burdensome.[1350]

The Commission received several letters that specifically addressed the books and records requirements. One commenter generally supported the proposed record-keeping rule. This commenter stated it does not oppose establishing a five-year period for municipal advisor record retention and suggested that a record retention period of five years should be the same for broker-dealers, investment advisers, and municipal advisors.[1351] However, other commenters criticized some of the requirements as being too burdensome, especially for small independent municipal advisors.[1352] For example, one commenter noted that the expense required for firms to retain originals or copies of all written communications, internal or external, relating to their municipal advisory activities caused particular concern.[1353] This commenter recommended that this requirement be eliminated, while all other books and records requirements could remain.[1354] Alternatively, this commenter suggested that only certain communications with a client or generated internally be required to be kept.[1355] Another commenter stated that, because independent municipal advisors neither hold client accounts nor hold custody of monies from clients, audited financial statements should not be required, particularly as they are costly and burdensome for small firms.[1356] This commenter suggested that the Commission should narrow the record-keeping requirements to communication material specifically relevant to financing topics and financing recommendations or advice.[1357] One commenter also requested that the Commission clarify that every iteration of commonly used and routinely changing technical financial documents, typically referred to as ''numbers runs,'' need not be retained, and that only iterations either sent to a client or used internally to form the basis for a recommendation to a client must be retained.[1358]

The Commission has carefully considered the issues raised by commenters and is adopting Rule 15Ba1–7 generally as proposed, but renumbered as Rule 15Ba1–8 and with modifications to include general ledgers, as well as written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.

General ledgers would reflect asset, liability, reserve, capital, income and expense accounts.[1359] In the Proposal, the Commission inadvertently omitted general ledgers from proposed Rule 15Ba1–7. The Commission notes that ledgers are part of the books and records requirements for broker-dealers and investment advisers, and would already be made and kept by dually-registered municipal advisors.[1360] The Commission believes that general ledgers will assist its staff in understanding a municipal advisor's business dealings and financial condition, identifying and tracking illicit expenses, identifying sources of revenue that were previously undisclosed or that pose a conflict of interest, identifying and tracing possible acts of fraud and violations of applicable laws and rules (*e.g.,* MSRB Rule G–37 (Political Contributions and Prohibitions on Municipal Securities Business)), and conducting asset verification. In addition, the Commission notes that a municipal advisor's balance sheet and profit loss statement are derived from the general ledger.

The Commission believes it is also appropriate to include in the record-keeping requirement written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor. Under proposed Rule 15Ba1–2(b), each natural person who met the definition of municipal advisor would have been required to register as a municipal advisor by filing Form MA–I.[1361] Proposed Form MA–I included consent to service of process that a natural person would have been required to execute. In contrast, adopted Rule 15Ba1–2(b) requires a person applying

many cases a municipal advisor could, and therefore will be required to, furnish records immediately or within a few hours of a request. The Commission expects that only in unusual circumstances would a municipal advisor be permitted to delay furnishing records for more than 24 hours.

[1348] *See* Rule 15Ba1–8(e).

[1349] *See* Proposal, 76 FR 861.

[1350] *See id.,* at 862.

[1351] *See* MSRB Letter I.

[1352] *See, e.g.,* letter from Gerald Gornish, Chief Counsel, Pennsylvania Public School Employees' Retirement System, Pennsylvania Municipal Retirement System, Jeffrey B. Clay, Executive Director, Pennsylvania Public School Employees' Retirement System, and James B. Allen, Secretary, Pennsylvania Municipal Retirement System, dated February 22, 2011 (''Pennsylvania Public School Employees' Retirement Board Letter'') (noting that the Commission's estimate of 181 burden hours for books and records is not broken down further to an individual municipal advisor); letter from John B. Payne, Principal, B-Payne Group Financial Advisors, dated March 28, 2011 (''Bradley Payne Letter'') (''I can manage and support fee and conflict disclosures and outgoing email and client file retention, but that is it.''); letter from UFS Bancorp, dated February 22, 2011 (''UFS Bancorp Letter'') (''[The 181-hour annual burden for books and records] is nearly ten percent of a full-time person's time.''); letter from Adam W. Rygmyr, Associate General Counsel, TIAA–CREF, Individual & Institutional Services, LLC, dated February 22, 2011 (stating that the books and records requirement would largely duplicate existing record-keeping requirements for broker-dealers).

[1353] *See* Rule 15Ba1–8(a)(1) and NAIPFA Letter I (''The information technology and storage facilities required to keep all email or similar electronic communication and to segregate those that relate to municipal advisory business from other unrelated email is expensive. Firms would be required to either outsource this function or develop the capability in-house, which would necessitate hiring one or more IT professionals. Either way, the cost would be significant to firms with such limited revenue.''). *See also* letter from Thomas DeMars, Managing Principal, Fieldman, Rolapp & Associates, dated February 22, 2011 (''Fieldman Rolapp Letter'') (recommending that the Commission modify the record-keeping requirements to eliminate the need to retain all written communications, and clarify all other record-keeping requirements); and letter from Phillip C. Dotts, President, Public FA, Inc., dated February 22, 2011 (''Public FA Letter'').

[1354] *See* NAIPFA Letter I.

[1355] *See id.*

[1356] *See* Public FA Letter.

[1357] *See id.*

[1358] *See* NAIPFA Letter I.

[1359] *See* Rule 15Ba1–8(a)(2).

[1360] *See* 17 CFR 240.17a–3(a)(2) and 17 CFR 275.204–2(a)(2).

[1361] *See* proposed Rule 15Ba1–2(b).

for registration or registered as a municipal advisor to complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engaged in municipal advisory activities on its behalf.[1362] As such, Form MA–I no longer includes consents to service of process executed by such natural persons. Because the Commission would no longer receive these consents to service of process as part of Form MA–I, the Commission believes it is appropriate to include in the record-keeping requirement written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor. Specifically, the Commission believes that this requirement will help ensure that such natural persons have indeed executed consents to service of process and will allow Commission staff to examine such consents to service of process.

With respect to concerns related to the burden of the books and records requirements, including the burden for retaining originals or copies of all written communications relating to municipal advisory activities,[1363] the Commission continues to believe that the final books and records requirements are appropriate for all municipal advisors because they will facilitate the Commission's inspections and examinations of municipal advisors and assist the Commission in evaluating a municipal advisor's compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules. Moreover, even though it recognizes that such requirements may impose burdens and costs upon municipal advisors, the Commission understands that many municipal advisors already make and keep certain types of the books and records required to be made and kept under Rule 15Ba1–8(a) under other regulatory requirements or general industry practices. Specifically, because the books and records required to be made and kept under Rule 15Ba1–8(a) are generally based on the existing books and records requirements for broker-dealers and investment advisers, the Commission believes that many municipal advisors would already be familiar and in compliance with such requirements because they are also registered as broker-dealers or investment advisers. Moreover, as noted above, to reduce the burden that would result from the books and records requirements, Rule 15Ba1–8(e)(1) provides that any books or other records made, kept, maintained, and preserved in compliance with Rules 17a–3 and 17a–4 under the Exchange Act, rules of the MSRB, or Rule 204–2 under the Investment Advisers Act, which are substantially the same as the books and records required to be made, kept, maintained, and preserved under Rule 15Ba1–8, will satisfy the requirements of Rule 15Ba1–8.

With respect to those municipal advisors that are not also registered with the Commission as broker-dealers or investment advisers, the Commission recognizes that Rule 15Ba1–8 establishes new record-keeping requirements for these entities and may impact these entities to a greater degree than entities that have previously registered as broker-dealers or investment advisers.[1364] However, the Commission believes that all municipal advisors should be subject to the same record-keeping requirements, regardless of whether they have previously registered with the Commission in another capacity. As noted above, the Commission believes that Rule 15Ba1–8 is appropriate for all municipal advisors because it will facilitate the Commission's inspections and examinations of municipal advisors [1365] and assist the Commission in evaluating a municipal advisor's compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules. The Commission also believes that regulation of municipal advisors is in the public interest and will improve the protection of municipal entities and investors.

Further, because the Commission is adopting certain additional exemptions from the definition of municipal advisor, including an exemption for persons providing advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments, the burden of the books and records requirements is similarly reduced (*i.e.,* fewer persons would be required to register as municipal advisors and the record-keeping requirements would not cover activities that fall under an exemption or exclusion from the definition of municipal advisor). The Commission also notes that the burden of the books and records requirements for municipal advisors depends on the complexity of the business of a municipal advisor, which means smaller municipal advisors would be subject to proportionately lower burden in complying with such requirements.[1366] Further, as noted below, the Commission assumes that municipal advisors will use the most cost-effective method available, depending on their size and specific circumstances, to comply with Rule 15Ba1–8. The Commission understands that many municipal advisors generally make and keep the required records in electronic form, which will likely minimize the burdens and costs associated with record-keeping.[1367] Therefore, the Commission does not believe Rule 15Ba1–8 will be overly burdensome for municipal advisory firms, including small municipal advisory firms.[1368]

Finally, in response to comments, the Commission confirms that only iterations of ''numbers runs'' sent to a client or that are used to form the basis for a recommendation to a client must be retained.[1369] With respect to a commenter's suggestion that audited financial statements should not be required, the Commission notes that the requirements of Rule 15Ba1–8 do not apply to audited financial statements.[1370]

Record-keeping After a Municipal Advisor Ceases To Do Business

As proposed, Rule 15Ba1–8(c)[1371] requires a municipal advisory firm, before ceasing to conduct or discontinuing business as a municipal advisor, to arrange and be responsible for the continued preservation of the books and records for the remainder of the period required by Rule 15Ba1–8. It also requires the municipal advisory firm to notify the Commission in writing of the exact address where such books and records will be maintained during such period. The Commission did not

[1362] *See* Rule 15Ba1–2(b).

[1363] *See supra* notes 1353–1355.

[1364] *See infra* Sections VII.D.8.; VIII.D.3.a.; and X.D. (discussing the costs and burdens of Rule 15Ba1–8).

[1365] *See* 15 U.S.C. 78*o*-4(c)(7)(A). Based on the Commission's experience in conducting examinations of broker-dealers and investment advisers, which includes examinations of the types of books and records required by Rule 15Ba1–8(a), the Commission believes that the municipal advisor books and records requirements under Rule 15Ba1–8 will facilitate the Commission's inspections and examinations of municipal advisors.

[1366] *See also infra* notes 1594 and accompanying text (discussing PRA burdens of Rule 15Ba1–8) and 1867 and accompanying text (discussing the technological costs of Rule 15Ba1–8).

[1367] *See infra* note 1601 and accompanying text (discussing PRA burdens in connection with electronic storage of books and records).

[1368] Concerns expressed with respect to the impact of the rule on small municipal advisors are further discussed in Section IX below.

[1369] *See supra* note 1358 and accompanying text.

[1370] *See supra* note 1356 and accompanying text.

[1371] In the Proposal, this provision was numbered Rule 15Ba1–7(c).

receive any comments on this aspect of the proposal and is adopting Rule 15Ba1–8(c) without modification.

Requirements for Non-Residents

As proposed, Rule 15Ba1–8(f), which is modeled on Rule 204–2(j) under the Investment Advisers Act,[1372] sets forth the books and records requirements for non-resident municipal advisory firms, including requirements for keeping, maintaining, and preserving copies of the books and records that these municipal advisors are required to make, keep, maintain, and preserve under any rule or regulation adopted under the Exchange Act, as well as requirements for providing written notice to the Commission of the location of such books and records.[1373] Specifically, Rule 15Ba1–8(f) requires non-resident municipal advisory firms to keep, maintain, and preserve all such books and records in the United States [1374] and provide notice to the Commission of the address of such location within 30 calendar days [1375] after Rule 15Ba1–8 becomes effective (in the case of municipal advisory firms that are already registered or in the process of applying for registration when the rule becomes effective) or when filing an application for registration (in the case of municipal advisory firms that file applications for registration after the rule becomes effective).[1376] A non-resident municipal advisory firm is not required to keep, maintain, and preserve such books and records in the United States if the municipal advisor timely files with the Commission a written undertaking (in a form acceptable to the Commission and signed by a duly authorized person) to furnish the Commission, upon demand, copies of any or all of such books and records at the municipal advisor's expense at the Commission's principal or regional office (as specified by the Commission).[1377] Specifically, a non-resident municipal advisory firm must furnish the requested books and records within 14 calendar days [1378] of the Commission's written demand to the offices of the Commission as specified in the written demand.[1379]

The Commission did not receive any comments on its proposed record-keeping requirements for non-resident municipal advisory firms and is adopting Rule 15Ba1–8(f) without substantive modification.[1380] The Commission believes the requirements for non-resident municipal advisory firms will help ensure the Commission's effective regulation of municipal advisors. Further, as discussed in the Proposal, such requirements 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 requirements will 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, such as in the case of any jurisdictional dispute relating to such access.[1381]

IV. Designation of FINRA To Examine FINRA Member Municipal Advisors

The Dodd-Frank Act amended the Exchange Act to, among other things, require new entities and individuals to register with the Commission and authorize the Commission to examine such registrants, including municipal advisors. Some entities that are currently registered, or will be registered, with the Commission as municipal advisors are also registered with the Commission as broker-dealers and are members of FINRA. The Commission anticipates that FINRA will conduct examinations of Commission-registered municipal advisors that are also FINRA members, subject to the Commission's oversight. The Commission will be responsible for examining registered municipal advisors that are not FINRA members, which comprise the vast majority of the anticipated registrants.[1382]

The Commission believes that Section 15A of the Exchange Act provides authority to FINRA to examine its members' municipal advisory activities. Section 15A provides, in relevant part, that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that: (1) The association has the capacity to be able to enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act, the rules and regulations thereunder, the rules of the MSRB, and the rules of the association; [1383] and (2) the rules of the association provide that the association shall provide information to the MSRB about the examinations of the association so that the MSRB may assist in such examinations.[1384] In accordance with these provisions, FINRA, as a registered national securities association, has traditionally conducted examinations of its members' activities in connection with municipal securities for compliance with the Exchange Act, rules and regulations thereunder, and MSRB rules.

Registered municipal advisors are subject to the Exchange Act, rules and regulations thereunder, and MSRB rules. As such, Section 15A provides FINRA with authority to conduct examinations of its members' activities as registered municipal advisors in order to evaluate their compliance with the applicable laws and rules.[1385] In addition, the Dodd-Frank Act amended Section 15B of the Exchange Act to expressly provide that ''the Commission, or its designee, in the case of municipal advisors,'' conduct periodic examinations.[1386] Accordingly, the Commission designates FINRA as a designee to examine its members' activities as registered municipal advisors and evaluate compliance by such members with federal securities laws, Commission rules and regulations, and MSRB rules applicable to municipal advisors.

V. Implementation and Compliance Dates

As discussed above, Section 15B of the Exchange Act, as amended by the Dodd-Frank Act, makes it unlawful for a municipal advisor to provide advice to

[1372] 17 CFR 275.204–2(j).

[1373] In the Proposal, this provision was numbered Rule 15Ba1–7(f).

[1374] *See* Rule 15Ba1–8(f)(1).

[1375] The Commission is clarifying that the 30-day period refers to 30 calendar days.

[1376] *See* Rule 15Ba1–8(f)(2).

[1377] *See* Rule 15Ba1–8(f)(3)(i). Rule 15Ba1–8(f)(3)(i) sets forth the form of the undertaking.

[1378] The Commission is clarifying that the 14-day period refers to 14 calendar days.

[1379] *See* Rule 15Ba1–8(f)(3)(ii). The rule requires that any written demand 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.*

[1380] *See supra* notes 1375 and 1378.

[1381] *See* Proposal, 76 FR 862.

[1382] As of December 31, 2012, approximately twenty-five percent of the 1,110 MA–T registrants were also registered with FINRA as broker-dealers. Accordingly, under the permanent registration regime, the Commission believes that FINRA will examine but a small percentage of registered municipal advisors.

[1383] *See* 15 U.S.C. 78*o*–3(b)(2).

[1384] *See* 15 U.S.C. 78*o*–3(b)(15).

[1385] Moreover, as noted above, Section 15A(b)(15) of the Exchange Act requires FINRA rules to specify that it shall provide information to the MSRB about its examinations so that the MSRB may ''assist in such . . . examinations.'' 15 U.S.C. 78*o*–3(b)(15). This statutory provision implies that FINRA has the requisite authority to examine municipal advisors.

[1386] 15 U.S.C. 78*o*–4(c)(7)(A)(iii). Specifically, Section 15B(c)(7) provides that ''periodic examinations . . . shall be conducted by—(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association; (ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers; and (iii) the Commission, or its designee, in the case of municipal advisors.''

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.[1387] Section 15B of the Exchange Act also provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[1388] The temporary municipal advisor registration regime, also as discussed above, is set to expire on December 31, 2014.[1389] Rules 15Ba1–1 through 15Ba1–8, Rule 15Bc4–1, and Forms MA, MA–I, MA–W, and MA–NR will become effective 60 days after publication of the rules in the **Federal Register,** and municipal advisors must comply with the new rules within the applicable compliance filing periods described below.

The permanent municipal advisor registration system on EDGAR will be available to accept registration applications for municipal advisory firms, including sole proprietors, beginning July 1, 2014. As discussed below, however, the Commission is providing specific compliance filing periods for filing applications for registration under the permanent registration regime. To continue doing business as a municipal advisory firm, any firm that is registered as a municipal advisor under Rule 15Ba2–6T and Form MA–T as of the Effective Date must file a complete application for registration as a municipal advisor within the applicable filing period, as set forth below. In accordance with Section 15B(a)(2) of the Exchange Act, within forty-five days of the date such complete application is considered filed (or within such longer period as to which the applicant consents), the Commission shall grant registration or institute proceedings to determine whether registration should be denied.[1390] Before filing applications for registration as municipal advisors, municipal advisory firms will need to file a Form ID requesting an EDGAR access code as soon as possible, and should do so by no later than 30 days after the Effective Date to minimize processing delays.[1391]

To help ensure an orderly transition from the temporary registration regime to the permanent registration regime and the submission of applications through EDGAR, the Commission is providing the following compliance dates for municipal advisory firms to complete their applications for registration under the permanent registration regime. These compliance dates are based on the registration number a municipal advisor received (or will receive) when it registered (or will register) as a municipal advisor under Rule 15Ba2–6T and on Form MA–T (''temporary registration number''). A municipal advisory firm that has a temporary registration number falling within the range that begins on 866–00001–00 and ends on 866–00400–00 must file a complete application for registration under the permanent registration regime on or after July 1, 2014, but no later than July 31, 2014. A municipal advisory firm that has a temporary registration number falling within the range that begins on 866–00401–00 and ends on 866–00800–00 must file a complete application for registration under the permanent registration regime on or after August 1, 2014, but no later than August 31, 2014. A municipal advisory firm that has a temporary registration number falling within the range that begins on 866–00801–00 and ends on 866–01200–00 must file a complete application for registration under the permanent registration regime on or after September 1, 2014, but no later than September 30, 2014. A municipal advisory firm that has a temporary registration number that falls after 866–01200–00 must file a complete application for registration under the permanent registration regime on or after October 1, 2014, but no later than October 31, 2014.

A municipal advisory firm that enters into the municipal advisory business on or after October 1, 2014 and does not have a temporary registration number as of October 1, 2014, must file a complete application for registration under the permanent registration regime on or after October 1, 2014 and be registered with the Commission before engaging in municipal advisory activities. The Commission believes that this staggered compliance approach will help to facilitate an orderly transition from the temporary registration regime to the permanent registration regime.

For a municipal advisory firm that files a complete application during the applicable filing period, its temporary municipal advisor registration will continue in effect until the Commission grants or denies the application for registration, unless the temporary registration is rescinded by the Commission or withdrawn by the municipal advisory firm. Any complete application for registration received prior to the start of the applicable filing period for a municipal advisory firm will be considered filed[1392] on the first day of the applicable filing period.[1393] For a municipal advisory firm that engages in municipal advisory activities before and during the applicable filing period but that fails to file a complete application within the applicable filing period, the firm's temporary registration will expire forty-five days after the end of the applicable filing period. Therefore, a firm that continues to engage in municipal advisory activities after the expiration of its temporary registration would be in violation of Section 15B of the Exchange Act until it submits a complete application and the Commission grants its application for registration under the permanent registration regime.

A municipal advisory firm that is required to register as a municipal advisor with the Commission on or after the Effective Date but before the applicable filing period must register under the temporary registration regime as a municipal advisor and must file an application for registration under the permanent registration regime during the applicable filing period. Such municipal advisory firm's temporary registration will continue to be in effect until the date that its registration is granted or denied by the Commission under the permanent registration regime, unless the municipal advisory

[1387] *See* 15 U.S.C. 78*o*–4(a)(1)(B).

[1388] *See* 15 U.S.C. 78*o*–4(a)(2).

[1389] *See supra* Section II.C. *See also* Rule 15Ba2–6T and Form MA–T Extension Release, *supra* note 7.

[1390] *See* 15 U.S.C. 78*o*–4(a)(2).

[1391] As discussed in the Instructions, before a municipal advisory firm can electronically file the application with the Commission on EDGAR, such person must become an EDGAR filer with authorized access codes through the ''Form ID'' authorization process. Form ID is available on the Commission's Web site at *http://www.sec.gov/about/forms/secforms.htm#EDGAR.* For staff guidance regarding Form ID, Electronic Form ID Frequently Asked Questions are available on the Commission's Web site at *http://www.sec.gov/info/edgar/feifaq052306.htm.*

[1392] *See* Rule 15Ba1–2(c). *See also supra* note 971 and accompanying text (discussing that a Form MA is considered filed upon submission of a completed Form MA, together with all additional required documents, and clarifying that, if a Form MA is not considered complete, the Commission's statutory forty-five day review period will not commence).

[1393] For example, if a municipal advisory firm with a temporary registration number that falls between 866–00401–00 and 866–00800–00 files a complete application for registration on July 15, 2014, its application will be considered filed on August 1, 2014.

firm's temporary registration is rescinded by the Commission or withdrawn by the municipal advisory firm. A municipal advisory firm that is required to register as a municipal advisor with the Commission after the commencement of the applicable filing period must file an application with the Commission under the permanent registration regime.

VI. Delegation of Authority [1394]

A. Delegation to the Director of the Office of Municipal Securities

Rule 30–3a of the Commission's Rules of Organization and Program Management

The Commission is amending its existing delegations of authority by adding Rule 30–3a to its Rules of Organization and Program Management, which governs the delegations of authority to the Director of the Office of Municipal Securities (''Director'').[1395] Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that ''[w]ithin forty-five days of the date of the filing of [a municipal advisor registration] application (or within such longer period as to which the applicant consents), the Commission shall . . . by order grant registration, or . . . institute proceedings to determine whether registration should be denied.'' [1396] New Rule 30–3a delegates to the Director the authority to issue orders granting registration of municipal advisors within forty-five days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents).[1397]

Section 15B(c)(3) of the Exchange Act, as amended by the Dodd-Frank Act, provides the Commission with the authority to cancel the registration of a municipal advisor if it finds that such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1398] Rule 30–3a delegates to the Director the authority to issue orders canceling the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1399]

The delegations of authority to the Director in Rule 30–3a will allow the staff, on behalf of the Commission, pursuant to Section 15B of the Exchange Act,[1400] to review and act upon applications for registration, and to issue orders canceling municipal advisor registrations. The Commission believes that these delegations of authority will facilitate efficient registration and regulation of municipal advisors. Also, pursuant to Rule 30–3a, the Director may submit matters to the Commission for consideration as it deems appropriate.[1401]

Rule 19d of the Commission's Rules of Organization and Program Management

The Commission is also amending its existing Rules of Organization and Program Management by adding Rule 19d, which sets forth the responsibilities of the Director.[1402] In light of the changes made by the Dodd-Frank Act to Section 15B of the Exchange Act regarding the registration and regulation of municipal advisors, the Commission is adding Rule 19d, which states that the Director is responsible to the Commission for the administration and execution of the Commission's programs under the Exchange Act relating to the registration and regulation of municipal advisors. Rule 19d also states that the functions involved in the regulation of municipal advisors include recommending the adoption and amendment of Commission rules, and responding to interpretive and no-action requests. Therefore, Rule 19d specifies the role of staff in the registration and regulation of municipal advisors.

B. Delegation to the Director of the Office of Compliance Inspections and Examinations

Rule 30–18 of the Commission's Rules of Organization and Program Management

The Commission is amending its existing delegations of authority by amending Rule 30–18 of its Rules of Organization and Program Management governing the delegations of authority to the Director of the Office of Compliance Inspections and Examinations (''OCIE Director'').[1403] As noted above, Section 15B(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act, provides that ''[w]ithin forty-five days of the date of the filing of [a municipal advisor registration] application (or within such longer period as to which the applicant consents), the Commission shall . . . by order grant registration, or . . . institute proceedings to determine whether registration should be denied.'' [1404] The Commission delegates to the OCIE Director the authority to issue orders granting registration of municipal advisors within 45 days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents), and to grant registration of municipal advisors sooner than 45 days after the filing of an application for registration.[1405]

Section 15B(c)(3) of the Exchange Act, as amended by the Dodd-Frank Act, provides the Commission with the authority to cancel the registration of a municipal advisor if the Commission finds that such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1406] The amendment to Rule 30–18 delegates to the OCIE Director the authority to issue orders to cancel the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.[1407]

Section 15B(c)(3) of the Exchange Act, as amended by the Dodd-Frank Act, also provides for the withdrawal of municipal advisors from registration under such terms and conditions that the Commission deems necessary in the public interest or for the protection of investors or municipal entities or obligated persons.[1408] The amendment to Rule 30–18 delegates to the OCIE Director the authority to determine

[1394] The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**. *See* 5 U.S.C. 553(b). This requirement does not apply, however, to rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(3)(A). Because the amendments described in this Section VI are limited to the Commission's Rules of Organization and Program Management, they are not subject to the provisions of the APA requiring notice and opportunity for comment. Because the Commission is not publishing these rule amendments in a notice of proposed rulemaking, the provisions of the Regulatory Flexibility Act are not applicable. *See* 5 U.S.C. 603. For the same reason, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are also not applicable. *See* 5 U.S.C. 804(3)(C). Additionally, the Commission does not believe the amendments will have any anti-competitive effects for purposes of Section 23(a)(2) of the Exchange Act because they will not impose any new burden on municipal advisors or other market participants. *See* 15 U.S.C. 78w(a)(2). Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. *See* 44 U.S.C. 3501 *et seq.*

[1395] 17 CFR 200.30–3a.

[1396] 15 U.S.C. 78*o*–4(a)(2).

[1397] *See* 17 CFR 200.30–3a(a)(1)(i).

[1398] *See* 15 U.S.C. 78*o*–4(c)(3).

[1399] *See* 17 CFR 200.30–3a(a)(1)(ii).

[1400] 15 U.S.C. 78*o*–4.

[1401] *See* 17 CFR 200.30–3a(b).

[1402] 17 CFR 200.19d.

[1403] 17 CFR 200.30–18.

[1404] 15 U.S.C. 78*o*–4(a)(2).

[1405] *See* 17 CFR 200.30–18(j)(7).

[1406] *See* 15 U.S.C. 78*o*–4(c)(3).

[1407] *See* 17 CFR 200.30–18(j)(8)(i).

[1408] *See* 15 U.S.C. 78*o*–4(c)(3).

whether notices of withdrawal from registration on Form MA–W may become effective sooner than the 60-day waiting period.[1409]

These delegations of authority to the OCIE Director will allow the staff, on behalf of the Commission, pursuant to Section 15B of the Exchange Act,[1410] to review and act upon applications for registration and withdrawals from registration, and to make determinations with regard to the cancellation of municipal advisor registrations. These delegations of authority will facilitate efficient registration and regulation of municipal advisors. Also, the OCIE Director may submit matters to the Commission for consideration as it deems appropriate.[1411]

Rule 19c of the Commission's Rules of Organization and Program Management

The Commission is also amending its existing Rules of Organization and Program Management by amending Rule 19c, which sets forth the responsibilities of the OCIE Director.[1412] Currently, Rule 19c provides that the OCIE Director is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information processors, the MSRB, brokers and dealers, municipal securities dealers, transfer agents, investment companies, and investment advisers. Under Sections 15B and 17(a) of the Exchange Act, as amended by the Dodd-Frank Act, municipal advisors are now required to be registered with the Commission and are subject to record-keeping requirements promulgated by the Commission.[1413] Further, Section 17(b) of the Exchange Act provides that all records of persons described in Section 17(a) are subject ''to such reasonable periodic, special, or other examinations by representatives of the Commission . . . as the Commission * * * deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.'' [1414] In light of the changes made by the Dodd-Frank Act, the Commission is amending Rule 19c to reflect the responsibilities of the OCIE Director with respect to all persons subject to compliance inspections and examinations, including municipal advisors. These amendments specify the role of OCIE staff in the inspection and examination of records kept by municipal advisors.

VII. Paperwork Reduction Act

Certain rules that the Commission is adopting impose new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1415] 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 control number. In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted these collections of information to the Office of Management and Budget (''OMB'') for review. The title for the collection of information requirement is ''Rules 15Ba1–1 to 15Ba1–8—Registration of Municipal Advisors.'' The collection of information was assigned OMB Control No. 3235–0681.

In the Proposal, the Commission solicited comments on the collection of information requirements. In particular, the Commission solicited comments on whether the calculations of either the burden hours or associated costs were too high or too low.[1416] Some commenters addressed the collection of information aspects of the Proposal.

Many commenters opined generally that municipal advisor registration under the proposed rules would be overly burdensome and would impose significant costs that would prove detrimental, especially to smaller ''community banks'' and local and state municipalities.[1417] Although most of these letters neither provided specific suggestions to revise the Commission's estimates, nor provided specific alternative figures or calculations for actual burden hour figures, the Commission addresses the comments below.

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 necessary or appropriate in the public interest or for the protection of investors.[1418]

Under the final rules and forms, the permanent registration regime for municipal advisors will be more comprehensive than the temporary one and will require more detailed disclosures. Under Rule 15Ba1–2(a), each firm applying for registration with the Commission as a municipal advisor is required to complete and file electronically with the Commission Form MA. In addition, each person applying for registration, or registered with, the Commission as a municipal advisor must complete and file electronically with the Commission Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf.[1419] Each Form MA shall be considered filed with the Commission upon acceptance of Form MA, together with all additional required documents, including all required Form MA–Is, by the Commission's EDGAR system.[1420] A sole proprietor will have to complete both Form MA and Form MA–I.[1421]

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

Pursuant to Rule 15Ba1–5(a), a municipal advisory firm that registers on Form MA must amend its Form MA at least annually, within 90 days of the end of the municipal advisor's fiscal year in the case of firms or within 90 days of the end of the calendar year for sole proprietors, and more frequently as required by the General Instructions. In addition, a registered municipal advisor must promptly amend Form MA–I whenever any information previously provided therein becomes inaccurate.[1422] Municipal advisory firms must also amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory

[1409] *See* 17 CFR 200.30–18(j)(8)(ii).

[1410] 15 U.S.C. 78*o*–4.

[1411] *See* 17 CFR 200.30–18(m).

[1412] 17 CFR 200.19c.

[1413] 15 U.S.C. 78*o*–4 and 78q(a).

[1414] 15 U.S.C. 78q(b).

[1415] 44 U.S.C. 3501 *et seq.*

[1416] *See* Proposal, 76 FR 872, 878.

[1417] *See, e.g.,* Form Letter A.

[1418] *See* 15 U.S.C. 78*o*–4(a)(2).

[1419] *See* Rule 15Ba1–2(b)(1).

[1420] *See* Rule 15Ba1–2(c).

[1421] *See* Rule 15Ba1–2(b)(2). The Commission has developed an online filing system to permit municipal advisors to file a completed Form MA and Form MA–I through the EDGAR system.

[1422] *See* Rule 15Ba1–5(b).

activities on its behalf. Finally, registered municipal advisors must report successions of registration on Form MA.[1423]

Pursuant to Rule 15Ba1–4, all registered municipal advisors are required to file Form MA–W to withdraw from registration with the Commission as a municipal advisor. As will be the case with both Forms MA and MA–I, Form MA–W will be required to be filed electronically with the Commission.

Rule 15Ba1–6 sets forth the general procedures for serving non-residents. Pursuant to Rule 15Ba1–6 and the instructions to Form MA–NR, each non-resident municipal advisor applying for registration, at the time of filing of the municipal advisor's application on Form MA, must file with the Commission a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor. In addition, each municipal advisor applying for registration pursuant to, or registered under, Section 15B of the Exchange Act must file Form MA–NR with the Commission for each non-resident general partner, non-resident managing agent, and non-resident natural person associated with the municipal advisor who engages in municipal advisory activities on behalf of the municipal advisor.[1424] Rule 15Ba1–6(d) requires each non-resident municipal advisor to provide an opinion of counsel that the municipal advisor can, as a matter of law, provide the Commission with access to its books and records and submit to inspection and examination by the Commission.

Rule 15Ba1–8 requires all registered municipal advisors to maintain true, accurate, and current books and records relating to their municipal advisory activities. Generally, Rule 15Ba1–8 requires 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.

Rule 15Ba1–1(d)(3)(vi) exempts from the definition of ''municipal advisor'' any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities, provided that certain requirements are met. First, an independent registered municipal advisor must be providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities.[1425] Second, the person seeking to rely on Rule 15Ba1–1(d)(3)(vi) must receive from the municipal entity or obligated person a representation in writing that the municipal entity or obligated person is represented by, and will rely on the advice of, an independent registered municipal advisor.[1426] Third, the person must make certain disclosures to the municipal entity or obligated person and provide a copy of such disclosures to the municipal entity's or obligated person's independent registered municipal advisor.[1427] With respect to a municipal entity, the person seeking to rely on the exemption must disclose in writing that, by obtaining the representation discussed above from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty set forth in Section 15B(c)(1) of the Exchange Act[1428] with respect to the municipal financial product or the issuance of municipal securities.[1429] With respect to an obligated person, the person seeking to rely on the exemption must disclose in writing that, by obtaining the representation discussed above from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities.[1430]

Rule 15Ba1–1(h) defines ''municipal escrow investments'' to mean proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities. In determining whether or not funds to be invested or reinvested constitute municipal escrow investments, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1431]

Similarly, the Commission is adopting a qualification to the definition of ''proceeds of municipal securities'' that provides that in determining whether or not funds to be invested constitute proceeds of municipal securities, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1432]

B. Use of Information

The Commission believes Form MA and Form MA–I will help to ensure that the Commission can make information about municipal advisors 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. Further, the information provided on Form MA and Form MA–I will expand the amount of publicly available information about municipal advisors, including conflicts of interest and disciplinary history. Although much of the information required by Form MA is already publicly available with respect to municipal advisors that are already registered with the Commission as investment advisers or broker-dealers, many municipal advisors that are not currently registered with the Commission in another capacity will make this information available for the first time. In addition, while municipal advisors are currently required to disclose disciplinary history for some of their associated persons on Form MA–T, municipal advisors will be required to disclose on Form MA disciplinary history for all associated persons. Consequently, the final rules and forms will allow municipal entities and obligated persons, as well as others, to become more fully informed about municipal advisors in a more efficient manner.

In addition, the requirement that each municipal advisory firm register with

[1423] *See* Rule 15Ba1–7.

[1424] *See* Rule 15Ba1–6(a)(2).

[1425] *See* Rule 15Ba1–1(d)(3)(vi)(A). For purposes of this exemption, the term ''independent registered municipal advisor'' means a municipal advisor registered pursuant to Section 15B of the Exchange Act (15 U.S.C. 78*o*–4) and the rules and regulations thereunder and that is not, and within at least the past two years was not, associated with the person seeking to rely on Rule 15Ba1–1(d)(3)(vi).

[1426] *See* Rule 15Ba1–1(d)(3)(vi)(B). The person receiving the written representation may rely on the representation, provided that the person receiving such representation has a reasonable basis for relying on the representation.

[1427] Each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities. *See* Rule 15Ba1–1(d)(3)(vi)(C)(3).

[1428] 15 U.S.C. 78*o*–4(c)(1).

[1429] *See* Rule 15Ba1–1(d)(3)(vi)(C)(1).

[1430] *See* Rule 15Ba1–1(d)(3)(vi)(C)(2).

[1431] *See* Rule 15Ba1–1(h)(2).

[1432] *See* Rule 15Ba1–1(m)(3).

the Commission on Form MA and complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf will help ensure that the Commission has information to oversee respondents and their activities in the municipal securities market effectively. In particular, the information provided in Form MA will be used to determine whether to grant a municipal advisor's application for registration or to institute proceedings to determine whether registration should be denied. The information will also be used to focus examinations and aid in risk-based examination. Moreover, Form MA and Form MA–I will 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 municipal advisors engage; and evaluate the disciplinary history of all municipal advisors and associated persons, including all regulatory, civil, and criminal proceedings.

The requirement that a municipal advisor make and keep books and records, including written communications and records of associated persons, will help to ensure that records of the respondent's primary municipal advisory activities, as well as the activities of its associated persons, exist. The Commission and other regulators could potentially request books and records during an examination to evaluate the municipal advisor's compliance with the Exchange Act, the rules thereunder, and MSRB rules, as well as for other regulatory purposes.

The requirement that a non-resident municipal advisor complete Form MA–NR, and furnish Form MA–NR for its non-resident general partners, non-resident managing agents, and associated persons engaged in municipal advisory activities, will help minimize legal or logistical obstacles that the Commission may encounter when attempting to effect service, conserve Commission resources, and avoid potential conflicts of law. The requirement that a non-resident municipal advisor provide an opinion of counsel on Form MA will help ensure that such non-resident municipal advisor can provide access to its books and records and submit to inspection and examination by the Commission.

The requirement that certain written representations and disclosures be made in order for a person to be exempt from the definition of municipal advisor where a municipal entity or obligated person is represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities will allow the Commission staff to determine whether a person engaging in municipal advisory activities has failed to register with the Commission. Further, the information will allow municipal entities and obligated persons to understand whether a person is acting as a municipal advisor. Similarly, the exceptions from the definitions of municipal escrow investments and proceeds of municipal securities for reasonable inquiries will allow the Commission staff to determine whether a person engaging in municipal advisory activities has failed to register with the Commission.

C. Respondents

In the Proposal, the Commission estimated that the proposed ''collections of information'' would initially apply to approximately 1,000 municipal advisory firms, including sole proprietors.[1433] This estimate was based partly on the number of municipal advisors that had registered with the Commission under Rule 15Ba2–6T. As of October 2010, there were approximately 800 total unique electronic temporary registrations for municipal advisors where Form MA–T was completed and not withdrawn.[1434] In the Proposal, the Commission stated its belief that the number of Form MA–T registrants would likely increase beyond 800 because numerous applicants that would have been required to register might 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.[1435] For the PRA analysis of Rule 15Ba2–6T, the Commission estimated that approximately 1,000 applicants would be required to complete Form MA–T.[1436] The Commission therefore believed that 1,000 applicants would remain 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. The Commission also estimated that the average number of new Form MA applicants per year would be 100.[1437]

In the Proposal, the Commission also estimated that approximately 21,800 individuals would be required to register as natural person municipal advisors on Form MA–I,[1438] while the average number of new Form MA–I applicants per year would be 1,800.[1439] These estimates were based on trends observed in registrations of investment advisers and Form U4 applications submitted to FINRA.

In the Proposal, the Commission solicited comments on how many municipal advisors would incur collection of information burdens if the proposed rules and forms were adopted by the Commission.[1440] The Commission received no comments regarding the estimated number of municipal advisory firms that would be required to register initially on Form MA [1441] and no comments regarding estimates for the average annual number of new Form MA and Form MA–I applicants. Nevertheless, the Commission is revising its initial estimates of the numbers of applicants required to complete Form MA. The Commission's decision to revise its estimates is based, in part, on a comparison between the current number of Form MA–T registrants and the number of municipal advisors that are registered with the MSRB.

In October 2010, there were approximately 800 Form MA–T registrants. According to Form MA–T data, as of December 31, 2012, there were approximately 1,110 Form MA–T registrants. Of these Form MA–T registrants, as of December 31, 2012, approximately 901 were also registered as municipal advisors with the MSRB, as they are required to do prior to engaging in municipal advisory activities.[1442] For the reasons discussed below, the Commission believes that the number of Form MA–T registrants may not be an accurate representation of the number of municipal advisors and that MSRB data represents a better basis on which to estimate the number of municipal advisors active in the market.

The Commission believes that a number of persons, recognizing that the

[1433] *See* Proposal, 76 FR 865.

[1434] *See id.*

[1435] *See id.*

[1436] *See* Temporary Registration Rule Release, 75 FR 54473.

[1437] *See* Proposal, 76 FR 866.

[1438] *See id.* at 865.

[1439] *See id.*

[1440] *See id.* at 872.

[1441] For a discussion of comments regarding the number of natural persons who will need to initially register on Form MA–I, see *infra* note 1447–1467 and accompanying text.

[1442] The Commission staff obtained this estimate by comparing the list of MSRB registrants to the Commission's list of Form MA–T registrants as of December 31, 2012.

Commission does not impose any fees for registration, may have registered with the Commission as municipal advisors out of an initial overabundance of caution. Although some current Form MA–T registrants may not have registered with the MSRB because of uncertainty regarding the scope of the temporary registration regime, others may have determined in the intervening time after October 1, 2010, that registration with the MSRB was not required because they were not engaging in municipal advisory activities. The Commission staff understands based on discussions with market participants that these Form MA–T registrants may have retained Commission registration because there are no associated fees to maintain such registration.[1443] In addition, the Commission anticipates that the exemption for persons providing advice with respect to investment strategies that are not plans or programs for the investment of proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments [1444] will reduce the estimated number of initial Form MA applicants. Likewise, the Commission anticipates the additional exemptions adopted today will also reduce the estimated number of initial Form MA applicants.[1445] For these reasons, the Commission now estimates that the ''collections of information'' will initially apply to approximately 910 municipal advisory firms, including sole proprietors.[1446]

In addition, the Commission is revising its estimate of the number of Form MA–I submissions the Commission expects municipal advisory firms will be required to file.[1447] For reasons discussed below, the Commission is revising its estimate of approximately 21,800 Form MA–I submissions downward and currently estimates that, during the first year, municipal advisors will need to complete a Form MA–I for approximately 11,250 individuals.[1448]

In the Proposal, the Commission divided the number of Form MA–I applicants into three main categories: (1) Individuals who are currently also registered as investment adviser representatives, registered representatives of 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.[1449] First, the Commission estimated the number of individuals who are currently registered as investment adviser representatives, registered representatives of broker-dealers, or both, and would register on Form MA–I. To calculate this estimate in the Proposal, the Commission compared the proportion of FINRA Form U4 filers (*i.e.,* individuals who are investment adviser representatives and/or registered representatives of broker-dealers) to the sum of all investment advisers registered on Form ADV and all broker-dealers registered on Form BD. FINRA estimated that, as of October 2010, 637,000 individuals had registered as investment adviser representatives and/or registered representatives of broker-dealers on Form U4.[1450] The Commission estimated 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 was approximately 37.36 to 1.[1451] According to Form MA–T data that had been collected as of October 2010, the Commission estimated that approximately 450 of 1,000 Form MA–T registrants would be investment adviser and/or broker-dealer firms. Thus, in the Proposal, the Commission estimated that approximately 16,800 individuals who are registered as investment adviser representatives, registered representatives of broker-dealers, or both, would be required to register on Form MA–I.[1452]

Based on data collected as of December 31, 2012, the Commission is revising its estimate of the number of individuals who are employed at municipal advisors registered with the Commission as investment advisers and/or broker-dealers and for whom a municipal advisor will be required to file Form MA–I. FINRA estimates that, as of December 31, 2012, 670,016 individuals had registered as investment adviser representatives and/or registered representatives of broker-dealers on Form U4.[1453] The Commission estimates that, as of December 31, 2012, there were 32,645 broker-dealer and investment advisory firms.[1454] Thus, the revised estimate of the average number of individuals who are employed at municipal advisors registered with the Commission as investment advisers and/or broker-dealers and for whom a municipal advisor will be required to file Form MA–I is approximately 20.52.[1455] The Commission estimates that approximately 273 of the 910 Form MA registrants will be municipal advisors registered with the

[1443] The Commission staff also understands based on discussions with market participants that some municipal advisors may have maintained Form MA–T registration instead of withdrawing from registration to wait and see whether registration would be required under the permanent registration regime, while others may not have realized they could withdraw from registration or may have determined not to withdraw for other reasons.

[1444] *See* Rule 15Ba1–1(d)(3)(vii).

[1445] *See supra* Section III.A.1.c.

[1446] This estimate rounds to the nearest higher multiple of ten the number of municipal advisors that are registered with the MSRB to engage in municipal advisory activities. The Commission uses a similar rounding convention in estimating the number of municipal advisors that will newly register with the Commission in subsequent years, amend prior filings, and withdraw from registration.

[1447] As discussed above, natural person municipal advisors who are not sole proprietors no longer need to register with the Commission. However, the Commission is retaining Form MA–I to obtain information about individuals associated with municipal advisory firms engaged in municipal advisory activities on behalf of such firms. The Commission notes, moreover, that it is the municipal advisory firms, not the individuals, that will be required to file Form MA–I with the Commission.

[1448] 5,602 (estimated number of individuals who are registered as investment adviser representatives, registered representatives of broker-dealers, or both, for whom a municipal advisor will be required to file Form MA–I) + 4,910 (estimated number of individuals employed by a municipal advisor not otherwise registered with the Commission for whom a municipal advisor will be required to file Form MA–I) + 730 (estimated number of individuals who are employed at solicitors) = 11,242 Form MA–I applicants.

[1449] *See* Proposal, 76 FR 865.

[1450] *See* October 2010 ''Registered Reps'' in ''FINRA Statistics,'' available at *http://www.finra.org/Newsroom/Statistics. See also* Proposal, 76 FR 865.

[1451] 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. *See* Proposal, 76 FR 865.

[1452] 450 (total number of investment adviser and broker-dealer firms registered as municipal advisors) × 37.36 (proportion of Form U4 registrants to all Form ADV and Form BD registrants) = 16,812. *See id.*

[1453] 630,391 (number of registered representatives of broker-dealers) + 39,625 (number of investment adviser representatives who are not also registered representatives of a broker-dealer) = 670,016. *See* 2012 ''Registered Reps'' in ''FINRA Statistics,'' available at *http://www.finra.org/Newsroom/Statistics.* The Proposal did not include the number of investment adviser representatives who are not also registered representatives of a broker-dealer when determining the proportion of Form U4 registrants to the sum of Form ADV and Form BD registrants.

[1454] 4,632 (broker-dealers) + 10,754 (Commission-registered investment advisers) + 17,259 (state-registered investment advisers) = 32,645. The Proposal did not include the number of state-registered investment advisers when determining the proportion of Form U4 registrants to the sum of Form ADV and Form BD registrants.

[1455] 670,016 (estimated number of Form U4 registrants) ÷ 32,645 (number of broker-dealers, SEC-registered investment advisers, and state-registered investment advisers) = 20.52.

Commission as investment advisers and/or broker-dealers.[1456] Accordingly, the Commission currently estimates there to be approximately 5,602 individuals who are employed at municipal advisors registered with the Commission as investment advisers and/or broker-dealers for whom a Form MA–I will need to be filed.[1457]

Second, in the Proposal, the Commission estimated the number of individuals who are employed at municipal financial advisors and who would register on Form MA–I. The Commission staff learned from discussions with industry and market participants that it was reasonable to estimate that there is an average of approximately 10 professional employees per financial advisor. According to Form MA–T data that had been collected as of October 2010, the Commission estimated that approximately 450 of 1,000 MA–T registrants would be financial advisors. Thus, in the Proposal, the Commission estimated that approximately 4,500 individuals who are employed at financial advisors would be required to register on Form MA–I.[1458]

The Commission now estimates that approximately 491 of the 910 Form MA registrants will be municipal advisors not otherwise registered with the Commission.[1459] Accordingly, the Commission currently estimates there to be approximately 4,910 individuals employed by a municipal advisor not otherwise registered with the Commission for whom a Form MA–I will need to be filed.[1460]

Third, in the Proposal, the Commission estimated the number of individual solicitors who would register on Form MA–I. The Commission examined the data of all Form MA–T registrants as of October 2010, and estimated that approximately 100 out of 1,000 registrants were solicitors. For purposes of the Proposal's PRA, the Commission assumed that there were five individual solicitors who would register on Form MA–I for every solicitor firm that would register on Form MA.[1461] Thus, in the Proposal, the Commission estimated that approximately 500 individual solicitors would be required to register on Form MA–I.[1462]

The Commission now estimates that approximately 146 of the 910 Form MA registrants will be solicitors.[1463] Accordingly, the Commission currently estimates there to be approximately 730 individuals employed by solicitors for whom a Form MA–I will need to be filed.[1464]

One commenter noted that, for the Proposal's estimate of 21,800 natural persons who will be required to register initially on Form MA–I, the Commission ''completely disregards'' governing body appointees ''who may number in the tens of thousands and will likely require significantly more time and expense per person to ensure compliance than the population of financial professionals assumed in the Proposed Rule.'' [1465] In the Proposal, the Commission stated that it did 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 ''municipal advisor.'' [1466] As discussed above, however, Rule 15Ba1–1(d)(3)(ii) now provides an exemption from the definition of municipal advisor for any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity, regardless of whether such person is an employee of the municipal entity or obligated person.[1467] Therefore, the Commission does not believe that it should increase the current estimated number of Form MA–I to account for appointed board members of governing bodies.

The Commission is not revising its initial estimate of the average number of firms that will newly register as a municipal advisor each year. In the Proposal, the Commission estimated that the average number of new Form MA applicants per year would be approximately 100.[1468] The Commission staff has reviewed Form MA–T data as of December 31, 2012, and estimates that approximately 205 municipal advisors filed an initial Form MA–T in 2011 and approximately 115 filed an initial Form MA–T in 2012. In the Proposal, the Commission stated that it believed that the number of Form MA–T registrants would likely increase beyond 800 because numerous applicants that would have been required to register might have missed the October 30, 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.[1469] The Commission believes

[1456] The Commission staff has examined Form MA–T data as of December 31, 2012, and estimates that approximately 30% of Form MA–T registrants are municipal advisors registered with the Commission as investment advisers and/or broker-dealers (330 municipal advisors registered with the Commission as investment advisers and/or broker-dealers registered on Form MA–T ÷ 1,110 municipal advisors registered on Form MA–T = 29.73%). The Commission assumes that the same percentage of municipal advisors registered with the Commission as investment advisers and/or broker-dealers will register with the Commission on Form MA. 910 (estimated number of municipal advisors registered on Form MA) × 30% = 273.

[1457] 273 (estimated number of municipal advisors registered with the Commission as investment advisers and/or broker-dealers) × 20.52 (estimated average number of employees per municipal advisor registered with the Commission as an investment adviser and/or broker-dealer) = 5,601.96.

[1458] 450 (total number of independent financial advisor firms registered as municipal advisors) × 10 (estimated average number of professional employees per independent financial advisor firm) = 4,500. *See* Proposal, 76 FR 865.

[1459] The Commission staff has examined Form MA–T data as of December 31, 2012, and estimates that approximately 54% of Form MA–T registrants are municipal advisors not otherwise registered with the Commission (603 municipal advisors not otherwise registered with the Commission registered on Form MA–T ÷ 1,110 municipal advisors registered on Form MA–T = 54.32%). The Commission assumes that the same percentage of municipal advisors not otherwise registered with the Commission will register with the Commission on Form MA. 910 (estimated number of municipal advisors registered on Form MA) × 54% = 491.4.

[1460] 491 (estimated number of municipal advisors not otherwise registered with the Commission registered as municipal advisors) × 10 (estimated average number of professional employees per municipal advisors not otherwise registered with the Commission) = 4,910.

[1461] *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'' practices by investment advisers and estimating that the typical solicitor firm consists of 2 to 5 professionals). *See* Proposal, 76 FR 865.

[1462] 100 (estimated number of solicitors) × 5 (estimated number of Form MA–I applicants per solicitor) = 500. *See* Proposal, 76 FR 865.

[1463] The Commission staff has examined Form MA–T data as of December 31, 2012, and estimates that approximately 16% of Form MA–T registrants are solicitors (177 Form MA–T registrants that are solicitors ÷ 1,110 municipal advisors registered on Form MA–T = 15.95%). The Commission assumes that the same percentage of solicitors will register with the Commission on Form MA. 910 (estimated number of municipal advisors registered on Form MA) × 16% = 145.6.

[1464] 146 (estimated number of solicitors that are registered as municipal advisors) × 5 (estimated average number of professional employees per solicitor) = 730.

[1465] *See* Wayne County Airport Authority Letter.

[1466] *See* Proposal, 76 FR 834. As proposed, to trigger the municipal advisor registration requirement, an appointed member of a governing body would have needed to be engaged in municipal advisory activities, and most appointed members do not engage in such activities.

[1467] *See supra* Section III.A.1.c.i.

[1468] For its estimate of the average annual number of new Form MA applicants, the Commission relied on investment adviser registration data, which indicated that new investment adviser applicants comprise, on average, approximately 10.4% of the total number of registered investment advisers. *See* Proposal, 76 FR 866. 1,000 (all Form MA applicants) × 10.4% = 104 new Form MA applicants per year. *See id.*

[1469] *See id.* at 865.

this could explain the higher number of municipal advisors that filed an initial Form MA–T in 2011 than in 2012. Thus, the Commission believes that, going forward, it is appropriate to estimate approximately 115 new Form MA–T registrations per year (assuming the temporary regime were to continue). Based on the estimate of the number of new Form MA–T registrations per year, the Commission continues to estimate that approximately 100 new municipal advisory firms will register on Form MA each year.[1470]

The Commission, however, is revising its estimate of the average number of individuals for whom municipal advisory firms will need to submit a new Form MA–I. In the Proposal, the Commission estimated that the average number of new Form MA–I applicants per year would be 1,800.[1471] The Commission now estimates that municipal advisors will need to submit a new Form MA–I for approximately 950 individuals annually.[1472]

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Initial Registration Burden

a. Form MA

In the Proposal, the Commission estimated that it would take a municipal advisory firm an average of 3.5 hours to complete Form MA.[1473] This estimate was based on the estimated average amount of time for a municipal advisory firm to complete Form MA–T and the estimated average amount of time for an investment adviser to complete Part 1A of Form ADV. The Commission stated in the Proposal that this estimate would apply to all municipal advisory firms because even those that had already completed Form MA–T under the temporary registration regime would be required to register anew under the permanent registration regime.[1474]

Additionally, the Commission stated in the Proposal that, at the time it initially files Form MA, a municipal advisory firm would be required 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 would meet standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. The Commission estimated that the initial burden to comply with the Form MA self-certification requirement would be, on average, approximately 3.0 hours per applicant.[1475] The Commission based this estimate on 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.[1476] Thus, the Commission estimated that the total average initial burden for Form MA would be 6.5 hours per applicant.[1477]

As noted above, the Commission is making some revisions to clarify the questions asked in the forms and to elicit additional information. The Commission recognizes that some revisions will increase the burden for municipal advisors to complete the relevant forms, while others will decrease the burden. For example, to reduce the burden for municipal advisory firms with many offices, Form MA will require information pertaining only to the five largest offices. On the other hand, Form MA now requires certain additional information that will result in additional burdens, including additional identifying information and information regarding disciplinary history.

Because of these reasons and because most of the changes to Form MA are clarifications not requiring additional information,[1478] on balance, the Commission does not believe the additional information requirements will impose additional burdens on municipal advisors in the aggregate. As noted in the Proposal, the average time necessary to complete Form MA–T is 2.5 hours, while the average time necessary to complete Part 1A of Form ADV, a lengthier registration form, is 4.32 hours.[1479] Based on the comparative estimated burdens to complete Form MA–T and Part 1A of Form ADV, the Commission continues to believe that its burden estimate for the completion of Form MA is reasonable. As discussed above, however, the Commission is not adopting a self-certification requirement.[1480] Therefore, the Commission estimates that the total average initial burden for Form MA will be 3.5 hours per applicant.

In the Proposal, the Commission estimated that the total initial paperwork burden for completion and submission of Form MA during the first year would be 6,500 hours.[1481] Given its revised estimates for Form MA applicants, as described above, and its decision not to adopt a self-certification requirement, the Commission now estimates that the total initial paperwork burden for completion and submission of Form MA during the first year will be 3,185 hours.[1482]

In the Proposal, the Commission solicited comments on the collection of information burdens associated with the proposed rules and forms.[1483] The Commission received two comment letters that addressed the Commission's burden estimates for Form MA. Both commenters argued that completing Form MA would require significantly more than the estimated 6.5 hours.[1484] One commenter, in particular, asserted that:

> [T]he cost estimates included in the Proposal are grossly underestimated. Rather than the 6.5 hours estimated by the Commission, our members estimate that the initial preparation of Form MA would require significantly greater hours and much higher costs. Annual updates are estimated to require exponentially higher hours to update and maintain the filing. In this regard, some of our members have observed that the time required to prepare the Form MA–T to register under the Commission's temporary rules required well in excess of 6.5 hours.[1485]

However, this commenter did not provide specific figures by which to recalculate the Commission's estimates,

[1470] The Commission estimates that the percentage of Form MA–T registrants that will also be Form MA registrants is 82%, or 910 (estimated number of Form MA registrants) ÷ 1,110 (current Form MA–T registrants). The Commission assumes that this percentage adjustment also applies in connection with its estimate of the number of new municipal advisory firms that will register on Form MA each year. 115 (estimated number of new Form MA–T registrants per year) × 82% = 94.3 new Form MA registrants per year.

[1471] To estimate the average annual number of new Form MA–I applicants, the Commission relied on FINRA registration data, which indicated 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. *See* Proposal, 76 FR 866. 21,800 (all Form MA–I applicants) × 8.39% = 1,829 new Form MA–I applicants per year. *See id.*

[1472] 11,250 (initial number of individuals for whom municipal advisory firms will need to submit a Form MA–I) × 8.39% = 943.88 individuals for whom municipal advisory firms will need to submit a new Form MA–I.

[1473] *See* Proposal, 76 FR 866.

[1474] *See id.*

[1475] *See id.* at 866–67.

[1476] *See* Securities Exchange Act Release No. 47262 (January 27, 2003), 68 FR 5348 (February 3, 2003); Securities Exchange Act Release No. 49333 (February 27, 2004), 69 FR 11244 (March 9, 2004). *See also* Proposal, 76 FR 866.

[1477] *See* Proposal, 76 FR 867.

[1478] *See supra* Section III.A.2.

[1479] *See* Proposal, 76 FR 866.

[1480] *See supra* Section III.A.2.b.

[1481] 1,000 (persons required to submit Form MA) × 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 6,500 hours. *Id.*

[1482] 910 (persons required to submit Form MA) × 3.5 hours (average estimated time required to complete Form MA) = 3,185 hours.

[1483] *See* Proposal, 76 FR 872.

[1484] *See, e.g.,* Union Bank Letter; Financial Services Roundtable Letter.

[1485] *See* Financial Services Roundtable Letter.

making it difficult to evaluate these assertions.

While the Commission recognizes that some applicants will require well in excess of 3.5 hours to complete Form MA, the Commission reiterates that the hourly estimate is meant to reflect an average and emphasizes that, as noted in the Proposal, depending on the specific circumstances of the municipal advisory firm, the initial burden to complete Form MA will vary greatly from respondent to respondent.[1486] Factors that will affect the initial burden include the size of the municipal advisory firm, the complexity of its business activities, and the amount and type of information to be included on Form MA. Moreover, as noted above, Form MA generally allows applicants for municipal advisor registration to incorporate by reference information that already has been submitted on other forms under other Commission regulatory requirements.[1487] The Commission believes that the ability of registrants to incorporate by reference will lower the hourly average burden for many applicants. The Commission anticipates that, generally, many smaller municipal advisory firms will require less time than the 3.5 hour average burden estimate, while larger municipal advisory firms that offer a variety of services to municipal entities will require considerably more time since they will have more information to disclose in Form MA.

The collection of information made pursuant to Form MA is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

b. Form MA–I

In the Proposal, the Commission estimated that the average amount of time for a natural person municipal advisor to complete Form MA–I would be 3.0 hours.[1488] The Commission determined this figure by estimating the paperwork burden for Form MA–I compared to that of Form MA–T, which is estimated to be 2.5 hours per applicant.[1489] The Commission believed 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 to complete Form MA–T.[1490] In the Proposal, the Commission stated that the estimate of 3.0 hours to complete Form MA–I would apply to all natural person municipal advisors because even those that had already completed Form MA–T under the temporary registration regime would be required to register anew under the permanent registration regime.[1491]

As noted above, a natural person municipal advisor who is not a sole proprietor is no longer required to register as a municipal advisor by completing Form MA–I. However, the Commission has determined that a municipal advisory firm must submit Form MA–I to provide information pertaining to each associated person who engages in municipal advisory activities on the firm's behalf. Although the person responsible for submitting Form MA–I has changed since the Proposal, the Commission does not believe that its estimate regarding the number of hours required to complete Form MA–I would materially change. Rather, the Commission believes that it would take an individual and a municipal advisory firm substantially the same number of hours to complete Form MA–I. Similarly, although municipal advisory firms may, over time, become more efficient in completing Form MA–I, the Commission does not believe the time savings would be substantial enough to cause the Commission to revise its estimate.

As discussed above, the Commission is also making some revisions to clarify the questions asked in Form MA–I and to elicit additional information. The Commission recognizes that some revisions will change the estimated burden provided in the Proposal to complete Form MA–I, while others will decrease the burden. For example, to reduce the paperwork burden, an individual's disciplinary history reported on Form MA can be incorporated by reference in Form MA–I. On the other hand, Form MA–I now requires certain additional information that would result in additional burden, including additional identifying information and information regarding disciplinary history.

As with Form MA, because most of the changes to Form MA–I are clarifications not requiring additional information, on balance, the Commission does not believe the additional information requirements will impose additional burdens on municipal advisors in the aggregate.[1492] Moreover, as noted above, Form MA–I generally allows information that already has been submitted on other forms to be incorporated by reference.[1493] Based on the comparative estimated burden to complete Form MA–T and the ability to incorporate by reference, the Commission continues to believe that its hourly burden estimate for the completion of Form MA–I is reasonable and is retaining the estimate as originally proposed. Therefore, the Commission estimates that the average amount of time for a municipal advisory firm to complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and who engages in municipal advisory activities on its behalf will be 3.0 hours.

In the Proposal, the Commission estimated that, during the first year, the total paperwork burden for completion and submission of Form MA–I would be 65,400 hours.[1494] Given its revised estimate of the number of individuals for whom municipal advisory firms will need to complete a Form MA–I, as described above, the Commission now estimates that the total initial paperwork burden for completion and submission of Form MA–I during the first year will be 33,750 hours.[1495]

The Commission received two comment letters addressing the estimated burden to complete Form MA–I. One commenter contended that Form MA–I, as proposed, contained many questions that are irrelevant to board trustees who are not involved in investment transactions.[1496] According to the commenter, completion of the form would likely take longer than three hours, would not benefit the Commission, and would impose unnecessary burdens and costs.[1497] Another commenter argued that the registration process would create burdens that would significantly outweigh any benefits created for a citizen to volunteer its services and that the registration requirements, such as paying fees, meeting multiple disclosure requirements, and facing ongoing

[1486] *See* Proposal, 76 FR 867.

[1487] *See supra* Section III.A.2.

[1488] *See* Proposal, 76 FR 867.

[1489] *See* Temporary Registration Rule Release, 75 FR 54473. *See also* Proposal, 76 FR 867.

[1490] *See* Proposal, 76 FR 867.

[1491] *See id.*

[1492] *See supra* Section III.A.2.

[1493] *See supra* Section III.A.2.

[1494] 21,800 (individuals required to submit Form MA–I) × 3.0 hours (average estimated time required to complete Form MA–I and initial self-certification) = 65,400 hours. *See* Proposal, 76 FR 867.

[1495] 11,250 (individuals for whom municipal advisors will be required to submit Form MA–I) × 3.0 hours (average estimated time required to complete Form MA–I) = 33,750 hours.

[1496] *See* Pennsylvania Public School Employees' Retirement Board Letter.

[1497] *See id.*

potential liabilities, could act as a deterrent for volunteers.[1498]

The Commission stated in the Proposal that it did not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members, such as citizen volunteers, should be excluded from the definition of ''municipal advisor.'' [1499] As discussed above, however, Rule 15Ba1–1(d)(3)(ii) now provides an exemption from the definition of municipal advisor for any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity, regardless of whether such person is an employee of the municipal entity or obligated person.[1500] Accordingly, under the rules that the Commission is adopting today, board trustees are not required to complete Form MA–I. The Commission, therefore, has not included citizen volunteers for purposes of the current PRA hourly burden estimate or the economic analysis cost estimates.

The collection of information made pursuant to Form MA–I is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

c. Total Initial Registration Burden Calculation

The Commission now estimates that the total initial one-time burden for municipal advisors to register with the Commission will be approximately 36,935 hours.[1501]

2. Annual Burden for Newly Registered Municipal Advisors

In the Proposal, the Commission estimated that the annual paperwork burden for firms to newly register as municipal advisors after the first year would be 650 hours for Form MA [1502] and 5,400 hours for Form MA–I.[1503] In light of its decision not to adopt a self-certification requirement, the Commission now estimates that the total ongoing annual burden for firms that will newly register as municipal advisors each year to complete Form MA will be approximately 350 hours.[1504] In addition, given the revised estimate of the average number of individuals for whom municipal advisory firms will need to submit a new Form MA–I, the Commission now estimates that the total annual burden to submit a new Form MA–I will be approximately 2,850 hours.[1505] Thus, the Commission estimates that the annual ongoing registration burden for new municipal advisors after the first year will be approximately 3,500 hours.[1506]

3. Annual Burden for Amendments to Form MA and Form MA–I

In the Proposal, the Commission estimated that the average time necessary to prepare an annual amendment to Form MA would be approximately 1.5 hours because only certain parts of Form MA would need to be amended.[1507] The Commission recognized that, depending on the extent of the amendments, the burden to complete an annual amendment to Form MA may vary greatly from respondent to respondent, and that some municipal advisors would require significantly more time than 1.5 hours, while others would require significantly less time than 1.5 hours.[1508] In addition, the Commission estimated that the annual burden to comply with the Form MA self-certification requirement would be, on average, approximately one hour per respondent. This estimate was based on burden estimates for Form N–CSR and Form N–Q.[1509]

In the Proposal, the Commission estimated that the average amount of time necessary to prepare an interim updating amendment to Form MA (*i.e.,* any additional amendment other than the required annual amendment) would be 0.5 hours.[1510] The Commission based this figure on its estimate for the amount of time required to prepare an interim updating amendment to Form ADV.[1511] The Commission estimated that each municipal advisor would likely amend Form MA two times during the year—one annual amendment and one interim updating amendment—although the Commission recognized that the actual number of amendments per municipal advisor might be higher or lower depending on the circumstances.[1512] Accordingly, the Commission estimated that the total burden to amend Form MA per year, including compliance with the annual self-certification requirement, would be 3,000 hours.[1513]

Given the revised estimate of the number of municipal advisors that will register with the Commission on Form MA initially, as described above, and its decision not to adopt a self-certification requirement, the Commission now estimates that the total annual burden for municipal advisors to amend Form MA will be 1,820 hours.[1514]

In the Proposal, the Commission estimated that the average amount of time to complete an updating amendment to Form MA–I would be 0.5 hours.[1515] The Commission based this figure on its estimate of the amount of time required to prepare an interim updating amendment to Form ADV.[1516] The Commission further estimated that the time required to complete the Form MA–I annual self-certification requirement would be approximately five minutes, or 0.1 hours.[1517] The Commission, relying on FINRA U4 registration data, estimated that a Form MA–I respondent would submit an average of 1.7 updating amendments per year. Therefore, the Commission estimated the total burden to prepare updating amendments to Form MA–I and to complete the annual self-

[1498] *See* National Association of Counties Letter.

[1499] *See* Proposal, 76 FR 834.

[1500] *See supra* Section III.A.1.c.i.

[1501] 3,185 (estimated initial burden for completion and submission of Form MA during the first year) + 33,750 (estimated initial burden for completion and submission of Form MA–I during the first year) = 36,935 hours.

[1502] 100 (new Form MA applicants per year) × 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 650 hours. *See* Proposal, 76 FR 868.

[1503] 1,800 (new Form MA–I registrants per year) × 3.0 hours (average estimated time required to complete Form MA–I and initial self-certification) = 5,400 hours. *See id.*

[1504] 100 (new Form MA applicants per year) × 3.5 hours (average estimated time required to complete Form MA) = 350 hours.

[1505] 950 (new Form MA–I filings per year) × 3.0 hours (average estimated time required to complete Form MA–I) = 2,850 hours.

[1506] 350 (estimated annual ongoing burden to complete Form MA) + 2,850 (estimated annual ongoing burden to complete Form MA–I) = 3,200 hours.

[1507] *See* Proposal, 76 FR 868.

[1508] *See id.*

[1509] *See id.*

[1510] *See id.*

[1511] *See id.*

[1512] *See id.*

[1513] (1,000 (persons required to amend Form MA) × 2.5 hours (average estimated time to amend Form MA and complete self-certification annually) × 1.0 (number of annual amendments per year)) + (1,000 (persons required to amend Form MA) × 0.5 hours (average estimated time to prepare an interim updating amendment for Form MA) × 1.0 (number of interim updating amendments per year)) = 3,000 hours per year. *See id.*

[1514] (910 (number of municipal advisors required to submit an annual amendment to Form MA) × 1.5 hours (average estimated time to prepare an annual amendment to Form MA) × 1.0 (number of annual amendments per year)) + (910 (number of municipal advisors required to submit an interim updating amendment to Form MA) × 0.5 hours (average estimated time to prepare an interim updating amendment to Form MA) × 1.0 (number of interim updating amendments per year)) = 1,820 hours per year.

[1515] *See* Proposal, 76 FR 868.

[1516] *See id.*

[1517] *See id.* The Commission stated its belief that this estimate was appropriate given the short time required to read and review the self-certification statement and sign the section.

certification would be approximately 20,700 hours.[1518]

In addition, under the proposed rules and forms, the Commission would have required individuals who register as municipal advisors by completing Form MA–I to file Form MA–W to withdraw from registration. Accordingly, in the proposal, the Commission estimated that the total annual burden to withdraw from MA–I registration would be approximately 1,350 hours.[1519]

As noted above, a natural person municipal advisor who is not a sole proprietor is no longer required to register as a municipal advisor by completing Form MA–I. However, the Commission has determined that municipal advisory firms must submit Form MA–I to provide information pertaining to each associated person who engages in municipal advisory activities on the firm's behalf. In addition, the final rules and forms require municipal advisory firms to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory activities on its behalf.

Given the revised estimate of the number of individuals for whom municipal advisory firms will need to submit a Form MA–I, the Commission now estimates that the average number of amendments to Form MA–I that municipal advisory firms will need to submit to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf will be approximately 1,340.[1520] Thus, the total annual ongoing burden for municipal advisory firms to amend Form MA–I for this purpose will be approximately 670 hours.[1521]

Given the change to Form MA–I described above and the overall revised estimate of the number of individuals for whom municipal advisors will be required to submit a Form MA–I, the Commission now estimates that the total annual burden municipal advisors will incur to prepare updating amendments to Form MA–I will be approximately 9,563 hours.[1522] As discussed in Section III.A.2, the final rules do not require an annual self-certification on Form MA–I.

The Commission received one comment that specifically addressed the estimated burden for amendments to Form MA and Form MA–I.[1523] Although the commenter did not provide its own burden estimates, it argued that ''[a]nnual updates are estimated to require exponentially higher hours to update and maintain the filing.'' [1524] This commenter also did not provide specific figures by which to recalculate the estimates, making it difficult to evaluate these assertions.

While the Commission is aware that in some cases (*i.e.,* for some larger municipal advisors with a large number of municipal entity and obligated person clients) annual updates may require significantly more time than estimated in the Proposal, the Commission does not agree that regular updates will generally require ''exponentially higher'' hours. The Commission anticipates that such updates will involve incremental or minor changes in reporting and in most cases will not require large-scale changes to Form MA or Form MA–I. Thus, the Commission believes that its hourly burden estimates for amendments to Form MA and Form MA–I remain reasonable and retains them as originally proposed.

In summary, the Commission estimates that the total annual burden for municipal advisors to complete amendments to Form MA and Form MA–I will be approximately 12,053 hours.[1525]

The collection of information made pursuant to amendments to Form MA and Form MA–I is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

4. Withdrawal From Municipal Advisor Registration

In the Proposal, the Commission estimated that the average time necessary to complete Form MA–W would be approximately 0.5 hours.[1526] The Commission based this estimate on burden estimates for Form ADV–W.[1527] Further, in the Proposal, the Commission estimated that the average number of withdrawals from Form MA registration per year would be 60,[1528] and that the total annual burden would be approximately 30 hours.[1529]

The Commission received no comment letters that specifically addressed the Form MA–W hourly burden estimates. Although the Commission has made modifications to Form MA–W since the Proposal, because those changes are minor,[1530] the Commission is retaining its hourly burden estimates for Form MA–W as originally proposed.

The Commission has reviewed Form MA–T data as of December 31, 2012, and estimates that approximately 22 municipal advisors filed a withdrawal on Form MA–T in 2011 and approximately 24 municipal advisors filed a withdrawal on Form MA–T in 2012. Based on experience with withdrawals on Form MA–T, the Commission now estimates that the average number of withdrawals from Form MA registration per year will be

[1518] (21,800 (persons required to amend Form MA–I during any given year) × 0.5 hours (average estimated time to prepare any updating amendment for Form MA–I) × 1.7 (average number of amendments per year)) + (21,800 (persons required to complete annual self-certification on Form MA–I) × 0.1 hours (average estimated time to complete self-certification)) = 20,710 hours per year. *See id.* at 869.

[1519] The Commission, relying on the proportion of individuals who fully terminated FINRA registration to all Form U4 registrants, estimated that the average number of Form MA–I withdrawals per year would be approximately 2,700. 21,800 (all Form MA–I applicants) × (79,722 ÷ 637,000) (proportion of individuals who fully terminated FINRA registration to all Form U4 registrants) = 2,728. *See* Proposal, 76 FR 869. 2,700 (estimated number of persons withdrawing from Form MA–I registration each year) × 0.5 hours (average estimated time to complete Form MA–W) = 1,350 hours per year. *Id.*

[1520] 11,250 (estimated number of individuals for whom municipal advisors will be required to submit Form MA–I) × (79,722 ÷ 670,016) (proportion of individuals who fully terminated FINRA registration to all Form U4 registrants) = 1,338.6.

[1521] 1,340 (estimated number of persons withdrawing from Form MA–I each year) × 0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) 670 hours per year.

[1522] 11,250 (estimated number of individuals who are employed at municipal advisors for whom updating amendments to Form MA–I will need to be filed) × 0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) × 1.7 (average number of amendments per year) = 9,562.5 hours per year.

[1523] *See* Financial Services Roundtable Letter.

[1524] *See id.*

[1525] 1,820 (estimated annual burden for municipal advisors to amend Form MA) + 670 (estimated annual burden for municipal advisors to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf) + 9,563 (estimated annual burden for municipal advisors to prepare updating amendments to Form MA–I) = 12,053 hours.

[1526] *See* Proposal, 76 FR 869.

[1527] *See id.*

[1528] To estimate the annual number of withdrawals for Form MA registrants, the Commission staff relied on investment adviser registration data, which indicated that, annually, investment adviser withdrawals comprise, on average, approximately 6.4% of the total number of registered investment advisers. 1,000 (all Form MA applicants) × 6.4% = 64 Form MA withdrawals per year. *See id.*

[1529] 60 (estimated number of persons withdrawing from Form MA registration each year) × 0.5 hours (average estimated time to complete Form MA–W) = 30 hours per year. *See id.*

[1530] *See supra* Section III.A.4.

30,[1531] and that the total annual burden will be approximately 15 hours.[1532]

The collection of information made pursuant to Form MA–W is mandatory and generally will not be confidential and will be made publicly available. Some information, such as social security numbers, will be kept confidential subject to applicable law.

5. Non-Resident Municipal Advisors

In the Proposal, the Commission estimated that there would be approximately 20 Form MA–NR filers: 16 non-resident general partners or non-resident managing agents [1533] and three non-resident municipal advisory firms.[1534] In the Proposal, the Commission noted that the average time necessary to complete Form ADV–NR, which is similar to Form MA–NR, is approximately one hour.[1535] The Commission estimated that, because of the additional time required to find and designate an agent, the process to complete Form MA–NR would take longer than Form ADV–NR, or approximately 1.5 hours on average.[1536] Thus, the Commission estimated that the total initial burden to complete Form MA–NR would be approximately 30 hours.[1537]

In addition, the Commission estimated that the additional burden to provide an opinion of counsel would add approximately three hours and $900 in outside legal costs per respondent.[1538] To obtain this estimate, the Commission relied 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 Rule 15Ba1–6(d).[1539] The Commission estimated that the total initial burden to provide an opinion of counsel would be approximately 9 hours [1540] and 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.[1541] Thus, the Commission estimated that the total initial burden to complete Form MA–NR and provide an opinion of counsel would be 39 hours.

The Commission received no comment letters that specifically addressed the Form MA–NR hourly burden estimates. Although the Commission has made modifications to Form MA–NR since the Proposal, because most of the changes are clarifications not requiring additional information, on balance, the Commission does not believe the additional information requirements will impose significant additional burdens on municipal advisors,[1542] and is retaining its hourly burden estimates to complete Form MA–NR as originally proposed.[1543] Given the revised estimate of Form MA applicants as described above, the Commission now estimates that two non-resident municipal advisory firms will need to complete Form MA–NR.[1544] In addition, the Commission estimates that those non-resident municipal advisory firms will need to furnish Form MA–NR for 15 non-resident general partners and non-resident managing agents.[1545]

The final rules and forms will also require each non-resident municipal advisory firm to file Form MA–NR for each non-resident natural person associated with the municipal advisor who engages in municipal advisory activities on behalf of the municipal advisor. The Commission estimates that the number of such non-resident natural persons will be the same as the number of non-resident general partners or non-resident managing agents, or 15.[1546] Thus, the total number of Form MA–NR filers will be approximately 32, and the total initial burden to complete Form MA–NR will be approximately 48 hours.[1547]

The Commission also estimates that the total initial burden to provide an opinion of counsel will be approximately 6 hours.[1548] Thus, the Commission estimates that the total initial burden to complete the estimated number of Form MA–NR submissions and provide an opinion of counsel will be 54 hours.[1549] In addition, the Commission now 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 will be approximately $1,800.[1550]

In the Proposal, the Commission also estimated the ongoing annual number of new Form MA–NR filers that are non-resident general partners or non-resident managing agents. Relying on investment adviser registration data, the Commission estimated 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 a new Form MA–NR.[1551] This estimate included the ongoing annual number of new Form MA–NR filers that are non-resident municipal advisors since the small initial number of non-resident municipal advisors suggested that, at most, there would be only one new non-resident municipal advisor every several years. Thus, the Commission estimated that the total burden per year to

[1531] This estimate represents an average of the number of withdrawals on Form MA–T in 2011 (22) and 2012 (24) rounded to the nearest higher multiple of ten.

[1532] 30 (estimated number of persons withdrawing from Form MA registration per year) × 0.5 hours (average estimated time to complete Form MA–W) = 15 hours per year.

[1533] 1,000 (all Form MA applicants) × 1.64% (percentage of Form ADV–NR filings to total number of investment adviser applicants) = 16 Form MA–NR filers that are non-resident general partners or non-resident managing agents. *See* Proposal, 76 FR 869–70.

[1534] 1,000 (all Form MA applicants) × (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. *See id.* at 870.

[1535] *See id.* at 869.

[1536] *See id.* The burden associated with this process would primarily involve the designation and authorization of a United States person as an agent for service of process.

[1537] 20 (persons expected to file Form MA–NR for the first time) × 1.5 hours (average estimated time to complete Form MA–NR) = 30 hours. *See id.* at 870.

[1538] *See id.* The $900 figure is based on an hourly cost estimate of $400 on average for an outside attorney, which is based on Commission conversations with law firms that regularly assist regulated financial firms with compliance matters. *See* Investment Advisers Act Release No. 3222 (June 22, 2011), 76 FR 39646 (July 6, 2011). Based on previous burden estimates, the Commission estimated that outside counsel will take, on average, 2.25 hours to assist in preparation of the opinion of counsel, for an average cost of $900 per respondent.

[1539] *See* Proposal, 76 FR 870.

[1540] 3 (non-resident municipal advisory firms expected to provide an opinion of counsel) × 3.0 hours (average estimated time to provide an opinion of counsel) = 9 hours. *See id.*

[1541] 3 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel for providing an opinion of counsel) = $2,700. *See id.*

[1542] *See supra* Section III.A.6.

[1543] *See supra* note 1536 and accompanying text.

[1544] 910 (all Form MA applicants) × (2 ÷ 900) (proportion of non-U.S.-based Form MA–T registrants compared to all Form MA–T registrants) = 2.02 Form MA–NR filers that are non-resident municipal advisors.

[1545] 910 (all Form MA applicants) × 1.64% (percentage of Form ADV–NR filings to total number of investment adviser applicants) = 14.92 Form MA–NR filers that are non-resident general partners or non-resident managing agents.

[1546] *See supra* note 1545 and accompanying text. The Proposal did not include the number of Form MA–I filers in estimating the burden associated with Form MA–NR.

[1547] 32 (persons expected to file Form MA–NR for the first time) × 1.5 hours (average estimated time to complete Form MA–NR) = 48 hours.

[1548] 2 (non-resident municipal advisory firms expected to provide opinion of counsel) × 3.0 hours (average estimated time to provide an opinion of counsel) = 6 hours.

[1549] 48 hours (total initial burden to complete of Form MA–NR) + 6 hours (total initial burden to provide an opinion of counsel) = 54 hours.

[1550] 2 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel to provide an opinion of counsel) = $1,800.

[1551] 1,000 (all Form MA applicants) × 0.09% (average annual percentage filings of Form ADV–NR) = 0.9 Form MA–NR filers per year; this number was rounded up to 1. *See* Proposal, 76 FR 870.

complete Form MA–NR would be approximately two hours.[1552] For the purposes of the analysis, the Commission assumed 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 Commission estimated that the total burden per year to provide opinion of counsel would be approximately three hours[1553] and 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.[1554]

The Commission continues to estimate that only one municipal advisor respondent per year will have a non-resident general partner, non-resident managing agent, or associated person that would be required to complete a new Form MA–NR.[1555] Thus, as in the Proposal, the Commission estimates that the total burden per year to complete a new Form MA–NR will be approximately two hours; [1556] the total burden per year to provide opinion of counsel will be approximately three hours; [1557] and the ongoing annual cost for non-resident municipal advisors to hire outside counsel as part of providing opinion of counsel will be approximately $900.[1558]

The Commission notes that filers may incur recurring burdens associated with Form MA–NR, such as costs incurred to monitor and maintain the information required by the form. For the purposes of this analysis, these recurring burdens are included in the estimates noted above. Rule 15Ba1–6 also will require that municipal advisors update the information on Form MA–NR if it becomes inaccurate. Similarly, these burdens are accounted for in the above estimates.

In summary, the Commission now estimates that the total initial burden for Form MA–NR will be approximately 54 hours; [1559] the total ongoing annual burden to complete a new Form MA–NR will be approximately two hours; [1560] the total initial cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel will be approximately $1,800; [1561] and the ongoing annual cost for non-resident municipal advisors to hire outside counsel as part of providing opinion of counsel will be approximately $900.[1562]

The collection of information made pursuant to Form MA–NR is mandatory and will not be confidential and will be made publicly available.

6. Outside Counsel

In the Proposal, the Commission stated its belief that some municipal advisory firms would seek outside counsel to help them comply with the requirements of the proposed rules, if adopted, and to complete Form MA.[1563] The Commission also stated its belief that it would be unlikely that natural person municipal advisors would obtain or consult with counsel for purposes of completing Form MA–I.[1564] For PRA purposes, the Commission assumed that all 1,000 municipal advisory firms registering on Form MA would, on average, consult with outside counsel for one hour to help them comply with the requirements.[1565] The Commission estimated 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.[1566] Given the revised estimate of Form MA applicants as described above, the Commission now estimates that such cost will be approximately $364,000.[1567] In addition, firms that seek to register as municipal advisors in each year after the first will likely hire outside counsel to review their compliance with the requirements of the proposed rules and forms. As discussed above, the Commission estimates that approximately 100 new municipal advisory firms will register on Form MA each year.[1568] Accordingly, the Commission estimates that the ongoing 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 $40,000.[1569]

As discussed above, the Commission received many comments that opined generally that municipal advisor registration under the proposed rules would be overly burdensome and would impose significant costs that would prove detrimental, especially to smaller ''community banks'' and local and state municipalities.[1570] Among these comments, many noted that local governments would need to hire counsel with expertise in dealing with the Commission to ensure that these officials are properly trained and advised in the intricacies of securities law.[1571]

As already discussed above, however, Rule 15Ba1–1(d)(3)(ii) now provides an exemption from the definition of municipal advisor for any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity, regardless of whether such person is an employee of the municipal entity or obligated person.[1572] Therefore, the concern that local governments would need to hire counsel to assist local government officials that are required to register as municipal advisors, thus raising the annual burden, is no longer warranted.

Another commenter argued that a natural person municipal advisor that registers on Form MA–I would require the assistance of an attorney well-versed

[1552] 1 (persons expected to file Form MA–NR each year) × 1.5 (average estimated time to complete Form MA–NR) = 1.5 hours per year. *See id.*

[1553] 1 (municipal advisory firms expected to provide an opinion of counsel) × 3.0 (average estimated time to provide opinion of counsel) = 3.0 hours per year. *See id.*

[1554] 1 (persons expected to file Form MA–NR each year) × $900 (average estimated cost to hire outside counsel to provide opinion of counsel) = $900. *See id.*

[1555] 910 (all Form MA applicants) × 0.09% (average annual percentage filings of Form ADV–NR) = 0.82 Form MA–NR filers per year; as in the initial estimate, this number is rounded up to 1.

[1556] 1 (persons expected to file Form MA–NR each year) × 1.5 (average estimated time to complete Form MA–NR) = 1.5 hours per year.

[1557] 1 (municipal advisory firms expected to provide an opinion of counsel) × 3.0 (average estimated time to provide opinion of counsel) = 3.0 hours per year.

[1558] *See supra* notes 1552–1554.

[1559] *See supra* note 1549 and accompanying text.

[1560] *See supra* note 1552 and accompanying text.

[1561] *See supra* note 1550 and accompanying text.

[1562] *See supra* note 1554 and accompanying text.

[1563] *See* Proposal, 76 FR 871.

[1564] *See id.*

[1565] *See id.*

[1566] 1,000 (estimated number of municipal advisory firms that would hire outside counsel) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $400,000. The hourly cost estimate of $400 on average for an attorney is based on Commission conversations with law firms that regularly assist regulated financial firms with compliance matters. *See id.*

[1567] 910 (estimated number of municipal advisory firms that would hire outside counsel) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $364,000. The hourly cost estimate of $400 on average for an attorney is based on Commission conversations with law firms that regularly assist regulated financial firms with compliance matters. *See supra* note 1538 (calculating the hourly rate for an outside attorney).

[1568] *See supra* note 1470 and accompanying text.

[1569] 100 (estimated number of new municipal advisory firms that would hire outside counsel each year) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $40,000. *See supra* note 1538 (calculating the hourly rate for an outside attorney).

[1570] *See, e.g.,* Form Letter A.

[1571] *See, e.g.,* City of St. Petersburg, Florida Letter; City of Yuma, Arizona Letter; Texas Municipal League Letter; Spiroff & Gosselar Letter.

[1572] *See supra* Section III.A.1.c.i.

in the federal securities laws.[1573] As discussed above, it is the obligation of the municipal advisory firm applying for registration with the Commission to complete Form MA–I for each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf. In addition, the Commission notes that the information requested on Form MA–I is similar to the information requested on FINRA's Form U4. The Commission believes that Form MA–I, like Form U4, does not require applicants to possess any specialized knowledge of federal securities laws or retain the services of a securities lawyer. For municipal advisory firms that are not sole proprietors, the Commission does not anticipate that such associated persons will require outside counsel to assist in the completion of Form MA–I. With regard to municipal advisory firms that are sole proprietors, the Commission anticipates that the estimate above regarding firms that would consult with outside counsel to assist in completing Form MA would also include the time required to complete Form MA–I.

One commenter argued that in many cases the Commission's estimate of $400 per hour for outside counsel is too low because applicants would generally seek to retain more experienced counsel when faced with the new registration requirements.[1574] The commenter also stated its belief that, for a financial institution that provides a variety of services to municipal clients, outside legal fees could easily exceed $25,000.[1575] However, this commenter did not provide specific figures by which to recalculate the Commission's estimates.

The Commission recognizes that, for such larger financial institutions offering diversified services, the outside legal fees will likely exceed the $400-per-hour estimate. However, the Commission calculated the estimate as an average cost across all municipal advisory firms, and many smaller firms require far less assistance from outside counsel or, in some cases, none at all. The $400 hourly rate for outside legal counsel, based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters, represents an average from a diverse group of industry sources, reflecting different geographical regions and seniority levels. The Commission notes that, depending on such variables, some outside counsel will charge more than $400 per hour, but many others will charge less. The Commission, therefore, continues to believe that its average hourly cost estimates for all municipal advisory firms to hire outside counsel are accurate and retains them as originally proposed.

7. Consent to Service of Process From Certain Associated Persons

If Form MA–I is being filed by a municipal advisory firm with respect to a natural person engaged in municipal advisory activities on its behalf, the authorized representative of the municipal advisory firm who signs the Execution Page of Form MA–I must attest that the municipal advisory firm has obtained and retained written consent from the individual that service of any civil action brought by, or notice of any proceeding before, the Commission or any SRO in connection with the individual's municipal advisory activities may be given by registered or certified mail to the individual's address given in Item 1 of Form MA–I. If Form MA–I is being filed by a natural person municipal advisor who is a sole proprietor, by signing the Execution Page of Form MA–I, he or she must consent that service of any civil action brought by, or notice of any proceeding before, the Commission or any SRO in connection with the sole proprietor's municipal advisory activities may be given by registered or certified mail to the sole proprietor's address given in Item 1 of Form MA–I.

The Commission estimates that each municipal advisory firm, other than sole proprietors, seeking to register with the Commission following adoption of the final rules and forms will need to obtain and retain [1576] a written consent to service of process from each natural person engaged in municipal advisory activities on its behalf.[1577] The Commission does not have the information necessary to provide a reasonable estimate regarding the number of sole proprietors that will register with the Commission as municipal advisors because this data is not currently available to the Commission and the Commission is unaware of any such data being publicly available. Accordingly, the Commission estimates that all municipal advisory firms seeking to register with the Commission (*i.e.,* 910 applicants) will need to obtain written consents to service of process.[1578] The Commission estimates that each municipal advisory firm would need approximately 1 hour to draft a template document to use in obtaining the written consents to service of process, amounting to an initial, one-time burden of approximately 910 hours.[1579] In addition, as discussed above, the Commission estimates that, during the first year, municipal advisors will need to complete a Form MA–I for approximately 11,250 individuals.[1580] The Commission estimates that, once drafted, each applicant would need approximately 6 minutes, or 0.10 hours, to obtain a written consent to service of process from each natural person engaged in municipal advisory activities on its behalf, amounting to an initial, one-time burden of approximately 1,125 hours.[1581] Accordingly, the Commission estimates that the total initial, one-time burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf will be approximately 2,035 hours.[1582]

In addition, firms that seek to register as municipal advisors in each year after the first will need to obtain a written consent to service of process from each natural person engaged in municipal advisory activities on their behalf. As discussed above, the Commission estimates that approximately 100 new municipal advisory firms will register on Form MA each year.[1583] Accordingly, the Commission estimates that the total ongoing annual burden for

[1573] *See* College Savings Plans of Maryland Letter.

[1574] *See* Financial Services Roundtable Letter.

[1575] *Id.*

[1576] Rule 15Ba1–8(a)(8) will require each municipal advisory firm to retain written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such registered municipal advisor.

[1577] Because sole proprietors will consent to service of process by signing the Execution Page of Form MA–I, sole proprietors will not need to obtain a separate consent to service of process. The requirement related to sole proprietors is already accounted for in the Commission's estimated burden to complete Form MA–I. *See supra* Section VII.D.1.b.

[1578] As discussed above, the Commission estimates that 910 municipal advisory firms, including sole proprietors, will register under the permanent registration regime. *See supra* note 1446 and accompanying text.

[1579] 910 (estimated number of applicants for municipal advisor registration during the first year) × 1.0 hours (estimated time required to draft a template to use in obtaining the written consents to service of process) = 910 hours.

[1580] *See supra* note 1448 and accompanying text.

[1581] 11,250 (estimated number of natural persons engaged in municipal advisory activities on behalf of a municipal advisory firm during the first year) × 0.10 hours (estimated time required to obtain the written consents to service of process) = 1,125 hours.

[1582] 910 hours (estimated one-time burden for all municipal advisory firms to draft a template to use in obtaining the written consents to service of process) + 1,125 hours (estimated one-time burden for all municipal advisory firms to obtain the written consents to service of process) = 2,035 hours.

[1583] *See supra* note 1470 and accompanying text.

firms that will newly register as municipal advisors each year to draft a template document to use in obtaining the written consents to service of process will be approximately 100 hours.[1584] In addition, as discussed above, the Commission estimates that municipal advisors will need to submit a new Form MA–I for approximately 950 individuals annually.[1585] Accordingly, the Commission estimates that the total ongoing annual burden for firms to obtain written consents to service of process from these persons will be approximately 95 hours.[1586] The Commission estimates that the total ongoing burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf in each year after the first will be approximately 195 hours.[1587]

8. Maintenance of Books and Records

The Commission proposed that all municipal advisory firms would be required, pursuant to proposed Rule 15Ba1–7, to maintain books and records relating to their municipal advisory activities. These books and records requirements were generally based 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.[1588]

In the Proposal, the Commission estimated that the average annual burden for a municipal advisory firm to comply with the proposed recordkeeping requirements would be similar to that of an investment adviser, or 181 hours.[1589] The Commission noted that the proposed recordkeeping requirements would likely impose initial burdens on respondents in connection with necessary updates to their recordkeeping systems, such as systems development or modifications.[1590] For the purposes of the Commission's analysis, these initial burdens were included in the estimate of 181 burden hours per respondent per year. Thus, the Commission estimated the total compliance burden would be approximately 181,000 hours per year.[1591]

The Commission has made two substantive modifications to the recordkeeping requirements since the Proposal. As discussed above, Rule 15Ba1–8(a)(2) will require municipal advisors to maintain general ledgers, a requirement that was inadvertently left out of proposed Rule 15Ba1–7.[1592] In addition, as discussed above, Rule 15Ba1–8(a)(8) will require each municipal advisory firm to retain written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.[1593] In light of these changes, the Commission now estimates that the average annual burden for a municipal advisory firm to comply with the recordkeeping requirements will be approximately 182 hours. Given the revised estimates of the number of Form MA applicants, the Commission now estimates that the total compliance burden will be approximately 165,620 hours per year.[1594]

The Commission received two comment letters that specifically addressed the annual books and records burden estimate. One commenter noted that, although the Commission estimated an annual burden of 181 hours for a municipal advisory firm, the estimate was not broken down further to an individual municipal advisor, such as a retirement board trustee.[1595] The Commission notes that, as proposed, the recordkeeping requirement would have applied only to municipal advisory firms and sole proprietors.[1596] For this reason, the Commission estimated the books and records burden for municipal advisory firms and sole proprietors only, and the estimate was not intended to reflect any recordkeeping burden for any other persons. Similarly, Rule 15Ba1–8(a), as adopted, states that the books and records requirement applies to ''[e]very person registered or required to be registered under section 15B of the Act.'' [1597] Because natural person municipal advisors, other than sole proprietors, are not required to register with the Commission under the final rules,[1598] the books and records requirement does not apply to natural person municipal advisors that are not sole proprietors.

Another commenter asserted that the Commission's estimate was ''optimistic,'' and that, although the estimated burden represents nearly ten percent of a full-time person's time, the number of hours did not include the cost of storage, and the actual burden would likely be higher.[1599]

The Commission recognizes that, for larger municipal advisory firms, the annual burden estimate of 182 hours may be low. The Commission anticipates that, for the purposes of calculating the applicable PRA burden, the annual burden for larger municipal advisory firms that offer a variety of services to municipal entities and have significantly greater volumes of books and records to maintain will be offset in the average by the significantly lower annual burden for smaller firms. As the Commission stated in the Proposal,[1600] given the relatively smaller size of municipal advisory firms compared to investment advisory firms and the fewer books and records requirements imposed by Rule 15Ba1–8, in the Commission's view, the annual hourly burden for smaller municipal advisory firms will likely be lower than 182 hours.

The Commission also believes that variations in the current records storage systems of respondents make it difficult for the Commission to estimate separately the cost of storage for a typical respondent. To the extent that the additional records required by the recordkeeping requirements can be stored and produced for inspection by

[1584] 100 (estimated number of new Form MA applicants per year) × 1.0 hours (estimated time required to draft a template to use in obtaining the written consents to service of process) = 100 hours.

[1585] *See supra* note 1472 and accompanying text.

[1586] 950 (estimated number of new Form MA–I filings per year) × 0.10 hours (estimated time required to obtain the written consents to service of process) = 95 hours.

[1587] 100 hours (estimated ongoing annual burden for all firms that will newly register as municipal advisors to draft a template to use in obtaining the written consents to service of process) + 95 hours (estimated ongoing annual burden for municipal advisory firms to obtain written consents to service of process) = 195 hours.

[1588] *See* 17 CFR 240.17a–3 and 17a–4, and 17 CFR 275.204–2. *See also* Proposal, 76 FR 871.

[1589] *See* Proposal, 76 FR 871.

[1590] *Id.*

[1591] 1,000 (estimated number of municipal advisors) × 181 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) = 181,000 hours. *Id.*

[1592] *See supra* notes 1359–1360 and accompanying text.

[1593] *See* Proposal, 76 FR 871.

[1594] 910 (estimated number of municipal advisors) × 182 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) = 165,620 hours.

[1595] *See* Pennsylvania Public School Employees' Retirement Board Letter.

[1596] *See* Proposed Rule 15Ba1–7.

[1597] *See* Rule 15Ba1–8(a).

[1598] Rule 15Ba1–3, as adopted, exempts from the registration requirement a natural person municipal advisor who is an associated person of an advisor that is registered with the Commission pursuant to Section 15B(a)(2) of the Exchange Act (15 U.S.C. 78*o*-4(a)(2)) and the rules and regulations thereunder, and engages in municipal advisory activities solely on behalf of a registered municipal advisor.

[1599] *See* UFS Bancorp Letter.

[1600] *See* Proposal, 76 FR 871. The Commission also addresses the burden for smaller municipal advisory firms in the Final Regulatory Flexibility Analysis below. *See infra* Section IX.

electronic means, the additional costs should not be substantial. The Commission also reiterates that the books and records estimate, as originally proposed, included storage costs and any needed technology refinements or upgrades.[1601] Accordingly, the Commission believes that the 182-hour figure, as an average annual hourly burden across all firms regardless of their size is an appropriate estimate.

This collection of information is mandatory. The Commission staff will use the mandatory collection of information for maintenance of books and records in its examinations and oversight program, and the information will be kept confidential subject to applicable law.

9. Exemption When a Municipal Entity or Obligated Person Is Represented by an Independent Registered Municipal Advisor

The Commission believes that underwriters in negotiated deals, because of the services they provide and the nature of negotiated deals,[1602] are the persons most likely to rely on the exemption available to persons engaging in municipal advisory activities where a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor. The Commission believes other persons will be less likely to rely on this exemption because the nature of the services they provide may not require a municipal entity or obligated person to engage an independent registered municipal advisor. The determination of whether to rely on this exemption will depend on the facts and circumstances of a particular deal and the parties involved in that deal, as well as the type of entity seeking to rely on the exemption. It is possible that not many persons will seek to rely on the exemption because another exclusion or exemption from the definition of municipal advisor is available. Although the Commission is providing this exemption, any efforts to rely on the exemption in Rule 15Ba1–1(d)(3)(vi) are purely voluntary.

According to available market data for 2012, approximately 204 underwriters participated in negotiated deals of municipal securities in 2012.[1603] The Commission estimates that 210 persons will seek to rely on this exemption.[1604]

A person seeking to rely on the exemption pursuant to Rule 15Ba1–1(d)(3)(vi) must obtain a written representation from the municipal entity or obligated person that it will not rely on the advice of the person seeking to rely on the exemption, and that it will rely on the advice of an independent registered municipal advisor. The Commission estimates that each person seeking to rely on this exemption would need approximately 1 hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of 210 hours.[1605]

There will also be an ongoing burden each time a person seeks to rely on this exemption. The Commission estimates that, on average, there are approximately 8,770 negotiated deals involving an underwriter each year.[1606] The Commission estimates that a person seeking to rely on this exemption would need approximately 15 minutes, or 0.25 hours, to obtain a written representation from a municipal entity or obligated person, amounting to an annual burden of approximately 2,193 hours.[1607]

In addition, the person seeking to rely on this exemption must make certain disclosures to the municipal entity or obligated person, and provide a copy of such disclosures to the municipal entity's or obligated person's independent registered municipal advisor. With respect to a municipal entity, such person must disclose in writing that, by obtaining the representation discussed above from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty set forth in Section 15B(c)(1) of the Exchange Act with respect to municipal financial products or the issuance of municipal securities.[1608] With respect to an obligated person, such person must disclose in writing that, by obtaining the representation discussed above from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities.[1609] The Commission estimates that each person seeking to rely on this exemption would need approximately 1 hour to draft the required disclosure, amounting to an initial, one-time burden of approximately 210 hours.[1610] The Commission believes that once these disclosures have been drafted, such language would become part of the standard municipal advice documentation and, accordingly, there would be no further ongoing associated burden.

In summary, the Commission estimates that the initial burden related to the exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor will be 2,613 hours.[1611] In addition, the Commission estimates that the ongoing burden will be 2,193 hours.[1612]

The Commission staff will use the collection of information under the exemption for independent registered municipal advisors in its examinations and oversight program to ensure that unregistered municipal advisors are properly exempt from registration. Any information reviewed by the Commission will be kept confidential subject to applicable law. In addition, the collection of information will allow municipal entities and obligated persons to understand whether a person is acting as a municipal advisor, and will allow persons relying on the exemption to demonstrate that registration with the Commission as municipal advisors was not required.

10. Municipal Escrow Investments

Rule 15Ba1–1(h) defines ''municipal escrow investments'' to mean proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and

[1601] *See* Proposal, 76 FR 871.

[1602] *See supra* note 604 and accompanying text (describing typical services provided by an underwriter in a negotiated deal) and note 614 (stating the definition of ''negotiated sale'').

[1603] According to data obtained from Thomson Reuters' SDC Platinum database, in 2012, 156 lead underwriters participated in negotiated deals. Including all underwriters that participated in negotiated deals in 2012, that number increases to 204.

[1604] This estimate rounds to the nearest higher multiple of ten the number of underwriters that participated in negotiated deals of municipal securities. The Commission believes this estimate, which likely overestimates the number of underwriters who are likely to seek to rely on this exemption, is inclusive of other persons who may seek to rely on this exemption.

[1605] 210 (estimated number of persons who will seek to rely on the exemption) × 1.0 hours (estimated time required to draft the written representation) = 210 hours.

[1606] This estimate represents an average of the number of negotiated deals each year from 2009 through 2012 relying upon data obtained from Thomson Reuters' SDC Platinum database.

[1607] 8,770 (estimated number of negotiated deals per year) × 0.25 hours (estimated time required to obtain the written representation) = 2,192.5 hours.

[1608] *See* Rule 15Ba1–1(d)(3)(vi)(C)(1).

[1609] *See* Rule 15Ba1–1(d)(3)(vi)(C)(2). Each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities. *See* Rule 15Ba1–1(d)(3)(vi)(C)(3).

[1610] 210 (estimated number of persons who will seek to rely on the exemption) × 1.0 hours (estimated time required to draft the required disclosure) = 210 hours.

[1611] 210 hours (estimated time to draft a template document to use in obtaining the written representation) + 2,193 hours (estimated time to obtain a written representation from a municipal entity or obligated person) + 210 hours (estimated time to draft the required disclosure) = 2,613 hours.

[1612] *See supra* note 1607 and accompanying text.

interest on one or more issues of municipal securities. As discussed above,[1613] in determining whether or not funds to be invested or reinvested constitute municipal escrow investments, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1614]

The Commission believes that state-registered investment advisers with municipal entity clients are the persons most likely to rely on Rule 15Ba1–1(h)(2) for reasonable reliance on representations related to municipal escrow investments. The Commission notes that no entity is required to utilize Rule 15Ba1–1(h)(2) and that any efforts to do so are voluntary.

The Commission estimates that approximately 700 persons may seek to rely on the exception for reasonable reliance on representations related to municipal escrow investments.[1615] The Commission estimates that each person seeking to rely on this exception would need approximately 1 hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of approximately 700 hours.[1616]

In addition, the Commission estimates that, once drafted, a person seeking to rely on this exception would need approximately 15 minutes, or 0.25 hours, to obtain a written representation from its client. The Commission estimates that persons that will seek to rely on this exception have approximately 8,620 clients that are municipal entities.[1617] Thus, the Commission estimates that the burden to obtain the written representation will be 2,155 hours.[1618]

Accordingly, the Commission estimates that the total initial burden for all persons to rely on the exception for reasonable reliance on representations related to municipal escrow investments will be 2,855 hours.[1619] Because the person seeking to rely on this exception only needs to obtain the written representation one time, the Commission does not believe that there will be an ongoing burden.

The Commission staff will use the collection of information under Rule 15Ba1–1(h)(2) in its examinations and oversight program to determine whether a person engaging in municipal advisory activities has failed to register with the Commission. Any information reviewed by the Commission will be kept confidential subject to applicable law. In addition, the collection of information will allow persons relying on Rule 15Ba1–1(h)(2) to demonstrate that registration with the Commission as municipal advisors was not required.

11. Proceeds of Municipal Securities

The definition of ''proceeds of municipal securities'' includes a qualification similar to Rule 15Ba1–1(h)(2) pertaining to municipal escrow investments. Namely, in determining whether or not funds to be invested constitute proceeds of municipal securities, a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.[1620]

The Commission believes state-registered investment advisers with clients that are municipal entities or certain pooled investment vehicles in which municipal entities invest are the persons most likely to rely on Rule 15Ba1–1(m)(3) for reasonable reliance on representations related to proceeds of municipal securities. The Commission notes that no entity is required to utilize Rule 15Ba1–1(m)(3) and that any efforts to do so are voluntary.

The Commission estimates that approximately 880 persons may seek to

[1613] *See supra* notes 383–384 and accompanying text.

[1614] *See* Rule 15Ba1–1(h)(2).

[1615] To calculate this estimate, the Commission staff examined data regarding investment advisers with assets under management under $100 million as of May 3, 2010. Section 410 of the Dodd-Frank Act reallocated primary responsibility for oversight of investment advisers by delegating generally to the states responsibility over certain investment advisers with assets under management between $25 million and $100 million (''mid-sized advisers''). The Commission does not maintain aggregate data regarding state-registered investment advisers, including mid-sized advisers registered with one or more state securities authorities, and is not aware of any publicly available data regarding state-registered investment advisers that could be used to calculate this estimate. As described in the paragraph below, however, the Commission does have such data as of May 3, 2010, which was prior to the passage of the Dodd-Frank Act (and the time those advisers were required to switch to state registration). Given the relatively short period of time that has elapsed since 2010 and the Commission's belief that, for purposes of this analysis, the nature of the investment advisory industry has not changed significantly since that time, the Commission is relying on data from 2010 to calculate these estimates.

According to registration information from the Investment Adviser Registration Depository (''IARD'') as of May 3, 2010, responses to Item 5.F(2)(c) of Part 1 of Form ADV indicate that there were 5,550 investment advisers with less than $100 million in assets under management registered with the Commission. According to responses to Item 5.D(9) of Part 1 of Form ADV, 211 of those investment advisers (or approximately 4%) (211 ÷ 5,550 = 0.038) had clients that were ''state or municipal government entities.''

As of January 1, 2013, there were 17,259 state-registered investment advisers. Using the same percentage of investment advisers with clients that were state or municipal government entities, the Commission staff estimates that approximately 700 state-registered investment advisers have clients that are state or municipal government entities. 17,259 (number of state-registered investment advisers as of January 1, 2013) × 0.04 (estimated percentage of state-registered investment advisers with state or municipal government entity clients) = 690.36. This estimate rounds to the nearest higher multiple of ten the number of state-registered investment advisers that have clients that are state or municipal government entities. The Commission believes this estimate, which likely overestimates the number of state-registered investment advisers who are likely to seek to rely on this exception, is inclusive of other persons who may seek to rely on this exception.

[1616] 700 (estimated number of persons who will seek to rely on the exception) × 1.0 hours (estimated time required to draft the written representation) = 700 hours.

[1617] According to responses to Item 5.D(9) of Part 1 of Form ADV, as of May 3, 2010, the 211 investment advisers identified above (*see supra* note 1615) had approximately 2,770 state or municipal government entity clients. The Commission staff used the midpoint of each range to estimate the number of such clients. The Commission does not have exact data from 2010 on the number of clients of investment advisers that are state or municipal government entities because Form ADV responses are in the format of a range (*e.g.,* 26–100 clients). In addition, the Commission does not have the information necessary to provide another point estimate.

The Commission staff, extrapolating from the ratio of the estimated number of state or municipal government entity clients in May 2010 to the number investment advisers with less than $100 million in assets under management registered with the Commission as of May 2010, estimates that, currently, state-registered investment advisers have approximately 8,620 clients that are state or municipal government entities. (2,770 (approximate number of state or municipal government entity clients of investment advisers having less than $100 million in assets under management that were registered with the Commission as of May 3, 2010) ÷ 5,550 (number of investment advisers with less than $100 million in assets under management that were registered with the Commission as of May 3, 2010)) × 17,259 (number of state-registered investment advisers as of January 1, 2013) = 8,613.95. This estimate rounds to the nearest higher multiple of ten the number of clients of state-registered investment advisers that are state or municipal government entities. The Commission believes this estimate, which likely overestimates the number of clients from which state-registered investment advisers would obtain written representations in reliance on this exception, is inclusive of the clients of other persons who may seek to rely on this exception.

[1618] 8,620 (estimated number of clients from which written representation will be obtained) × 0.25 hours (estimated time required to obtain the written representation) = 2,155 hours.

[1619] 700 hours (estimated time to draft a template document to use in obtaining the written representation) + 2,155 hours (estimated time required to obtain the written representations from clients) = 2,855 hours.

[1620] *See* Rule 15Ba1–1(m)(3). *See also supra* notes 363–365 and accompanying text.

rely on the exception for reasonable reliance on representations related to proceeds of municipal securities.[1621]

The Commission estimates that each person seeking to rely on this exception would need approximately 1 hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of approximately 880 hours.[1622]

In addition, the Commission estimates that, once drafted, a person seeking to rely on this exception would need approximately 15 minutes, or 0.25 hours, to obtain a written representation from its client. The Commission estimates that persons that will seek to rely on this exception have approximately 25,420 clients that are state or municipal government entities or that are pooled investment vehicles (other than registered investment companies) with municipal entity investors.[1623] Thus, the Commission estimates that the burden to obtain the written representation will be 6,355 hours.[1624]

Accordingly, the Commission estimates that the total initial burden for all persons to rely on the exception for reasonable reliance on representations related to proceeds of municipal securities will be 7,235 hours.[1625] Because the person seeking to rely on this exception only needs to obtain the written representation one time, the Commission does not believe that there will be an ongoing burden.

The Commission staff will use the collection of information under the qualification in the definition of proceeds of municipal securities in its examinations and oversight program to determine whether a person engaging in municipal advisory activities has failed to register with the Commission. Any information reviewed by the Commission will be kept confidential subject to applicable law. In addition, the collection of information will allow persons relying on the exception for reasonable reliance on representations related to proceeds of municipal securities to demonstrate that registration with the Commission as municipal advisors was not required.

[1621] As discussed above, as of May 3, 2010, of the 5,550 investment advisers with less than $100 million in assets under management registered with the Commission, 211 (or 4%) had clients that were state or municipal government entities. *See supra* note 1615. So as not to double-count those investment advisers that had clients that were state or municipal government entities, the Commission staff identified 5,339 investment advisers with less than $100 million in assets under management that did not respond that they had clients that were state or municipal government entities (5,550 − 211 = 5,339). Of those, responses to Item 5.D(6) of Part 1 of Form ADV indicate that 713 investment advisers with less than $100 million in assets under management that did not respond that they had clients that were state or municipal government entities responded that they had some clients that were pooled investment vehicles (other than registered investment companies). If the Commission estimates that the same percentage of investment advisers advise pooled investment vehicles (other than registered investment companies) with municipal entity investors as investment advisers that advise state or municipal government entities (*i.e.,* 4%), 29 of these investment advisers would be advisers to pooled investment vehicles (other than registered investment companies) with municipal entity investors (713 × 4% = 28.52). Accordingly, the Commission estimates that approximately 1% of the 5,550 investment advisers with less than $100 million in assets under management registered with the Commission as of May 3, 2010, had clients that were pooled investment vehicles (other than registered investment companies) with municipal entity investors (29 ÷ 5,550 = 0.0052). As of January 1, 2013, there were 17,259 state-registered investment advisers. Using the same percentage, the Commission staff estimates that approximately 180 state-registered investment advisers have clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. 17,259 (number of state-registered investment advisers as of January 1, 2013) × 1% (estimated percentage of state-registered investment advisers with clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors) = 172.59.

In addition, as discussed above, the Commission staff estimates that 700 state-registered investment advisers have clients that are state or municipal government entities. *See supra* note 1615. Therefore, the Commission staff estimates that 880 state-registered investment advisers have clients that are state or municipal government entities or that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. 700 (estimated number of state-registered investment advisers with clients that are state or municipal government entities) + 180 (estimated number of state-registered investment advisers with clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors) = 880. This estimate rounds to the nearest higher multiple of ten the estimated number of state-registered investment advisers that have clients that are state or municipal government entities and the estimated number of state-registered investment advisers that have clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. The Commission believes this estimate, which likely overestimates the number of state-registered investment advisers who are likely to seek to rely on this exception, is inclusive of other persons who may seek to rely on this exception.

[1622] 880 (estimated number of persons who will seek to rely on the exception) × 1.0 hours (estimated time required to draft the written representation) = 880 hours.

[1623] According to responses to Item 5.D(6) of Part 1 of Form ADV, as of May 3, 2010, 756 investment advisers registered with the Commission having less than $100 million in assets under management indicated that they had approximately 5,400 clients that were pooled investment vehicles (other than registered investment companies) with municipal entity investors. This estimate includes those investment advisers that had clients that were state or municipal government entities that were excluded from the estimate of the number of investment advisers with clients that were pooled investment vehicles (other than registered investment companies) with municipal entity investors. *See supra* note 1621. The Commission staff used the midpoint of each range to estimate the number of such clients. The Commission does not have exact data from 2010 on the number of clients of investment advisers because Form ADV responses are in the format of a range (*e.g.,* 26–100 clients). In addition, the Commission does not have the information necessary to provide another point estimate.

The Commission staff, extrapolating from the ratio of the estimated number of pooled investment vehicle (other than registered investment company) clients with municipal entity investors in May 2010 to the number investment advisers with less than $100 million in assets under management registered with the Commission as of May 2010, estimates that, currently, state-registered investment advisers now have approximately 16,800 clients that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. (5,400 (approximate number of pooled investment vehicle (other than registered investment company) clients with municipal entity investors of investment advisers having less than $100 million in assets under management that were registered with the Commission as of May 3, 2010) ÷ 5,550 (number of investment advisers with less than $100 million in assets under management that were registered with the Commission as of May 3, 2010)) × 17,259 (number of state-registered investment advisers as of January 1, 2013) = 16,792.54.

In addition, as discussed above, the Commission staff estimates that state-registered investment advisers now have approximately 8,620 clients that are state or municipal government entities. *See supra* note 1617. Therefore, the Commission staff estimates that state-registered investment advisers now have 25,420 clients that are state or municipal government entities or that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. 8,620 (estimated number of state or municipal government entity clients of state-registered investment advisers) + 16,800 (estimated number of clients of state-registered investment advisers that are pooled investment vehicle (other than registered investment company) clients with municipal entity investors) = 25,420. This estimate rounds to the nearest higher multiple of ten the number of clients of state-registered investment advisers that are state or municipal government entities or pooled investment vehicles (other than registered investment companies) with municipal entity clients. The Commission believes this estimate, which likely overestimates the number of clients from which state-registered investment advisers would obtain written representations in reliance on this exception, is inclusive of the clients of other persons who may seek to rely on this exception.

[1624] 25,420 (estimated number of clients from which written representation will be obtained) × 0.25 hours (estimated time required to obtain the written representation) = 6,355 hours.

[1625] 880 hours (estimated time to draft a template document to use in obtaining the written representation) + 6,355 hours (estimated time required to obtain the written representations from clients) = 7,235 hours.

Nature of information collection burden	Total hourly burden estimate	
	Initial	Ongoing
Form MA: Application for Municipal Advisor Registration	3,185	350
Form MA–I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities	33,750	2,850
Form MA–W: Notice of Withdrawal from Registration as a Municipal Advisor	0	15
Rule 15Ba1–5: Amendments to Form MA and Form MA–I	0	12,053
Form MA–NR: Designation of U.S. Agent for Service of Process for Non-Residents	54	5
Consent to Service of Process for Certain Associated Persons	2,035	195
Rule 15Ba1–8: Books and Records to be Made and Maintained by Municipal Advisors	0	165,620
Rule 15Ba1–1(d)(3)(vi): Exemption When a Municipal Entity or Obligated Person is Represented by an Independent Registered Municipal Advisor	2,613	2,193
Rule 15Ba1–1(h)(2): Exception to Definition of Municipal Escrow Investments	2,855	0
Rule 15Ba1–1(m)(3): Exception to Definition of Proceeds of Municipal Securities	7,235	0
Total Burden	51,727	183,281

12. Total Burden

In the Proposal, the Commission estimated that the total initial one-time burden for all respondents would be approximately 71,939 hours,[1626] while the total ongoing annual burden for all respondents would be approximately 212,135 hours.[1627] The total initial outside cost for all respondents would be $402,700,[1628] while the total ongoing outside cost for all respondents would be $900 per year.[1629]

The Commission now estimates that, under the final rules and forms, the total initial burden for all respondents will be approximately 51,727 hours,[1630] while the total ongoing annual burden for all respondents will be approximately 183,281 hours.[1631] The total initial outside cost for all respondents will be $365,800,[1632] while the total ongoing outside cost for all respondents will be $40,900 per year.[1633]

VIII. Economic Analysis

A. Overview

The Commission is sensitive to the costs and benefits of its rules. When engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires the Commission to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[1634] In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and 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.[1635]

In the Proposal, the Commission solicited comment on the costs and benefits of the proposed rule, including the proposed definition of ''municipal advisor'' and related terms; exclusions and exemptions of certain persons from the definition of municipal advisor; registration forms; and recordkeeping requirements.[1636] The Commission also requested 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.[1637] The Commission further encouraged commenters to provide specific data and analysis in support of their views.[1638]

The Commission received approximately 38 letters that addressed the Commission's estimates of the costs and benefits of the proposed rule.[1639]

[1626] 6,500 hours (initial burden for Form MA applicants) + 65,400 hours (initial burden to complete Form MA–I) + 39 hours (initial burden for Form MA–NR filers) = 71,939 hours. *See* Proposal, 76 FR 871.

[1627] 650 hours (annual burden for new Form MA applicants) + 5,400 hours (annual burden to complete new Form MA–I) + 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. *See id.*

[1628] $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. *See id.* at 872.

[1629] $900 = estimated ongoing cost to hire outside counsel for providing opinion of counsel. *See id.*

[1630] 36,935 hours (estimated initial burden for Form MA and MA–I) + 54 hours (estimated initial burden for Form MA–NR filers) + 2,035 hours (estimated initial burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf) + 2,613 hours (estimated initial burden for exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor) + 2,855 (estimated initial burden for exception for reasonable reliance on representations related to municipal escrow investments) + 7,235 (estimated initial burden for exception for reasonable reliance on representations related to proceeds of municipal securities) = 51,727 hours.

[1631] 3,200 hours (estimated annual burden for new Form MA and Form MA–I) + 12,053 hours (estimated annual burden for Form MA and Form MA–I amendments) + 15 hours (estimated annual burden for Form MA withdrawal) + 5 hours (estimated annual burden for Form MA–NR filers) + 165,620 hours (estimated annual burden for books and records requirement) + 195 hours (estimated ongoing burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf) + 2,193 (estimated annual burden for exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor) = 183,281 hours.

[1632] $1,800 (estimated initial cost to hire outside counsel for providing opinion of counsel) + $364,000 (estimated initial cost for review by outside counsel) = $365,800.

[1633] $900 (estimated ongoing cost to hire outside counsel for providing opinion of counsel) + $40,000 (estimated ongoing cost for all municipal advisory firms to hire outside counsel to review their compliance with the requirements of the proposed rules and forms) = $40,900.

[1634] 15 U.S.C. 78c(f).

[1635] 15 U.S.C. 78w(a)(2).

[1636] *See* Proposal, 76 FR 862–863, 878. An economic analysis was included in the proposing release. *See id.* at 872–78.

[1637] *See id.* at 878.

[1638] *See id.* at 863.

[1639] *See, e.g.,* City of St. Petersburg Letter; Dan A. Gray, President, Industrial Development Authority, City of Yuma, AZ; Vosburg Letter; Bill Longley, Texas Municipal League, Austin, TX; Rick Platt, President and CEO, Heath-Newark-Licking County Port Authority, Heath, OH; Nancy K. Kopp, State Treasurer and Board Chair, College Savings Plans of Maryland; Wayne County Airport Authority Letter; Larry E. Naake, Executive Director, National Association of Counties, Washington, DC; Laurie D. Grabow, Executive Vice President/CFO, Old Point National Bank (''Old Point Bank Letter''); National Association of Health & Educational Facilities Finance Authorities Letter; Ranson Financial Consultants Letter; Union Bank Letter; Texas Bankers Association Letter; Harlan Spiroff, Spiroff & Gosselar, Ltd.; Joy Howard WM Financial Strategies Letter; California State Treasurer's Office Letter; NAIPFA Letter; Specialized Public Finance Letter; State of Texas Letter; Pennsylvania Public School Employees' Retirement Board Letter; Ismael Guerrero, Housing Authority of the City and County of Denver; Jean Marie Buckley, President, Tamalpais Advisors, Inc. (''Tamalpais Advisors Letter''); SIFMA Letter I; ACLI Letter; MSRB Letter I; Public FA Letter; Financial Services Roundtable Letter; BMO Capital Markets Letter; Susan Gaffney,

Several commenters opined generally that municipal advisor registration as proposed would be overly burdensome and would impose costs that would be detrimental to the commenters. Further, some commenters criticized the Proposal's economic analysis generally, stating that the expected costs of the permanent registration regime were greatly underestimated.[1640] Other commenters asserted that the economic analysis was ''superficial'' in that it related ''almost entirely to filling out paperwork and hardly scratches the surface of the true regulatory burden'' [1641] and that the cost-benefit analysis was flawed because it only addressed the labor costs directly associated with registration and recordkeeping.[1642] One commenter stated that the Commission did not appear to consider adequately the costs of the proposed rules, particularly implementation costs and costs incurred by municipal entities and obligated persons as a result of increases in the price of advisory services.[1643]

The Commission does not agree that the economic analysis in the Proposal was ''superficial'' or that it focused solely on the registration and recordkeeping burdens. In developing the proposed rules and forms, the Commission considered the costs and benefits of requiring persons to register as municipal advisors, including the costs-benefit tradeoffs implicated in interpreting the definition of ''municipal advisor'' and related terms, interpreting the statutory exclusions, and proposing additional exemptions from the definition of municipal advisor. As stated in the Proposal, 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.[1644] The Commission also stated its belief that few, if any, of the costs would be passed on to municipal entities or obligated persons in the form of higher fees.[1645]

Similarly, in light of the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities and data currently available to the Commission, in determining the appropriate scope of the final rules and forms the Commission considered the types of persons that should be regulated as municipal advisors under Section 15B of the Exchange Act. The Commission has sought to tailor these rules so as not to impose unnecessary or inappropriate costs and burdens on municipal advisors. As discussed throughout this release, partly in response to comments, the Commission has modified the rules to minimize compliance burdens where consistent with investor protection. In addition, as discussed below, where commenters identified costs the Commission did not consider, the Commission has revised its economic analysis of the final rules to take these costs into account.

As discussed above in Section II.A.2.b, prior to the enactment of the Dodd-Frank Act, municipal advisors were largely unregulated as to their municipal advisory activities. Section 975 of the Dodd-Frank Act amended the Exchange Act to establish a federal regulatory regime that requires municipal advisors to register with the Commission,[1646] grants the MSRB regulatory authority over municipal advisors,[1647] and imposes, among other things, a fiduciary duty on municipal advisors when advising municipal entities.[1648] The Commission recognizes that while the final rules, which define municipal advisor and related terms as well as prescribe the exclusions and exemptions therefrom, are integral in determining which persons will be subject to the regulatory requirements established by Section 975 of the Dodd-Frank Act, the definitions, exclusions, and exemptions do not themselves establish the scope or nature of those substantive requirements or their related costs and benefits. For example, although a municipal advisor is subject to a fiduciary duty when advising a municipal entity client,[1649] the Commission is not interpreting the scope or nature of such duty in this rulemaking. Instead, the Commission notes that the Exchange Act provides that the MSRB shall prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients.[1650]

The Commission anticipates that any additional rules that the Commission adopts to implement the substantive requirements under Section 15B of the Exchange Act will be subject to their own economic analysis. In addition, the Commission has direct oversight authority over the MSRB, including the ability to approve or disapprove the MSRB's rules.[1651]

In adopting the final rules and forms, the Commission has considered the costs and benefits that accrue from subjecting municipal advisors and municipal advisory activities to the regulatory regime created by Section 975 of the Dodd-Frank Act. The Commission refers to those costs and benefits as ''programmatic'' costs and benefits.[1652] The programmatic costs

Government Finance Officers Association; Fieldman Rolapp Letter; UFS Bancorp Letter; John Sullivan (''John Sullivan Letter''); Bradley Payne Letter; William J. Caraway, President, Chancellor Financial Associates (''Chancellor Financial Associates Letter''); Committee of Annuity Insurers Letter I; NAESCO Letter; Solar Energy Industries Association Letter; Cristeena Naser, Senior Counsel, Center for Securities, Trust & Investment, American Bankers Association (''American Bankers Association Letter II'').

[1640] *See, e.g.,* American Counsel of Life Insurers Letter (stating that ''the Commission has significantly underestimated the complexity and costs associated with the proposed rule''); BMO Capital Markets Letter (stating that ''the costs analysis is not even remotely close to reality''); Bradley Payne Letter (stating that ''cost estimates published in the proposed regulations are wild guesses and were obviously generated by analysts who know absolutely nothing about my business'').

[1641] *See* Mintz Levin Letter; and State of California Letter.

[1642] *See* letter from Terry E. Singer, Executive Director, National Association of Energy Service Companies, dated September 26, 2011 (''NAESCO Letter II'').

[1643] *See* SIFMA Letter I. In addition, the Commission's Office of Inspector General prepared a report analyzing the economic analysis of several rule proposals and suggested that the Commission could have provided additional quantitative analyses to derive certain qualitative predictions in connection with the Proposal. *See* Office of Inspector General, Commission, Report of Review of Economic Analyses Performed by the Securities and Exchange Commission in Connection with Dodd-Frank Act Rulemakings, June 13, 2011, available at *http://www.sec-oig.gov/Reports/AuditsInspections/2011/Report_6_13_11.pdf.*

[1644] *See* Proposal, 76 FR 876. *See also* supra note 1643 and accompanying text (discussing comments related to increased prices for municipal entities and obligated persons).

[1645] *See id.*

[1646] *See* Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78*o*–4(a)(1)(B).

[1647] *See* 15 U.S.C. 78*o*–4(b).

[1648] *See* 15 U.S.C. 78*o*–4(c)(1).

[1649] *See* 15 U.S.C. 78*o*–4(c)(1).

[1650] *See* 15 U.S.C. 78*o*–4(b)(2)(L)(i).

[1651] Section 19(b) of the Exchange Act requires an SRO to file with the Commission any proposed rule change, and provides that a proposed rule change may not take effect unless it is approved by the Commission or becomes immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act. *See* 15 U.S.C. 78s(b). Section 3 of the Exchange Act defines the term ''self-regulatory organization'' to include the MSRB. *See* 15 U.S.C. 78c(a)(26). Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the rules of the MSRB not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78*o*–4(b)(2)(C). In addition, with respect to municipal advisors, MSRB rules shall not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud. *See* 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[1652] The Commission expects that the costs and benefits resulting from the municipal advisory regulatory regime will likely accrue primarily at the programmatic level. *See infra* Sections VIII.C.1 and VIII.D.2. To the extent appropriate given the purposes of Section 975 of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities and data currently available to the

Continued

and benefits have informed the Commission's decisions and actions in defining municipal advisor and related terms, its interpretations of the statutory exclusions, and its decision to provide further exemptions from the definition of municipal advisor as described throughout the release. The Commission has also considered the costs that persons will incur to assess whether registration as a municipal advisor is required (*i.e.,* ''assessment'' costs), as well as the costs and benefits that will accrue from the requirement that municipal advisors register with the Commission (*i.e.,* ''registration'' costs and benefits) and maintain the books and records as required by Rule 15Ba1–8 (*i.e.,* ''recordkeeping'' costs and benefits).

In the discussion below, the Commission begins by identifying its motivation for adopting the rules and forms and the baseline against which the Commission considers both the costs and benefits, as well as the effects on efficiency, competition, and capital formation, of the final rules and forms. Next, the Commission discusses broad economic considerations that stem from the final rules and forms, including the assessment costs. The Commission then discusses the potential programmatic, registration, and recordkeeping costs and benefits that the final rules and forms implicate, as well as the effects of the final rules and forms on efficiency, competition, and capital formation. The discussion focuses on the Commission's reasons for adopting the rules and forms, the affected parties, and the costs and benefits of the rules and forms compared to the baseline (*i.e.,* the temporary registration regime and the requirements imposed by the Dodd-Frank Act) and to alternative courses of action the Commission has considered.

B. Motivation for Rules and Forms

The rules and forms adopted today are designed to enhance the Commission's oversight of municipal advisors.[1653] The Commission believes the information provided pursuant to the final rules and forms may aid municipal entities and obligated persons in choosing municipal advisors that help municipal entities and obligated persons engage in issuances of municipal securities as well as investments in municipal financial products. The motivation for the rules and forms, which are discussed throughout this release, are summarized below.

First, the rules are designed to provide guidance related to the definition of municipal advisor and exclusions therefrom, as well as to provide exemptions from the municipal advisor regulatory regime. The statutory definition of municipal advisors is broad and includes persons that have not previously been considered municipal financial advisors.[1654] There are also relevant exclusions from the definition of municipal advisor that limit the scope of persons included in the municipal advisor regulatory regime. The statute, however, leaves undefined or ambiguous certain terms that are critical for market participants to discern who is or is not a municipal advisor.

Second, the final rules and forms establish a permanent mechanism for municipal advisors to register with the Commission. Effective October 1, 2010, the Dodd-Frank Act requires the establishment of a registration regime for municipal advisors.[1655] As discussed above, the Commission adopted a temporary registration regime to allow municipal advisors to satisfy temporarily the statutory registration requirement by submitting certain information electronically through the Commission's public Web site on Form MA–T.[1656] However, as that registration regime was intended to be temporary, the Commission is now establishing a permanent registration regime.

Third, the final rules and forms will expand the amount of publicly available information about municipal advisors, including conflicts of interest and disciplinary history. Because municipal advisors had been largely unregulated as to their municipal advisory activities prior to the Dodd-Frank Act,[1657] apart from information gathered through Form MA–T, there is little publicly and centrally available information about municipal advisors. In addition, although the information submitted on Form MA–T is publicly available on the Commission's Web site, the final rules and forms will require municipal advisors to disclose a greater amount of information, including conflicts of interest and more information pertaining to disciplinary history.[1658] In addition, the final rules and forms will increase the ability of municipal entities and obligated persons to become more fully informed about municipal advisors in a more efficient manner, and thereby, at a lower cost.[1659]

Fourth, the permanent registration regime is designed to enhance the ability of securities regulators to oversee municipal advisors, which could increase the willingness of market participants, specifically municipal entities and obligated persons, to utilize municipal advisors. The Commission staff will review applications for registration and by order grant registration or the Commission will institute proceedings to determine whether registration should be denied.[1660] Requiring municipal advisors to register with the Commission under the permanent registration regime will allow the Commission to collect additional information about municipal advisors that can be used to facilitate examination and enforcement efforts. The Commission believes that its authority to examine and sanction municipal advisors for false and misleading statements submitted by municipal advisors on Form MA or Form MA–I under the permanent registration regime, including the additional information on Form MA that is not required on Form MA–I, may result in increased reliability of the information, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors. Municipal advisors, knowing that additional information about their disciplinary histories must be disclosed pursuant to the final rules, may be further incentivized to avoid engaging in misconduct.

Finally, the permanent registration regime will require municipal advisors to maintain books and records regarding their municipal advisory activities. Recordkeeping requirements are a familiar and important element of the Commission's approach to investment adviser and broker-dealer regulation and

Commission, the Commission has sought to mitigate the costs entities will incur in connection with the registration and recordkeeping requirements.

[1653] *See supra* notes 101–103 and accompanying text. According to a Senate Report related to the Dodd-Frank Act, ''[t]he $3 trillion municipal securities market is subject to less supervision than corporate securities markets, and market participants generally have less information upon which to base investment decisions. During the [financial] crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries.'' *See* S. Rep. No. 111–176, at 38 (2010). Accordingly, in response to the financial crisis that began in 2008, the Dodd-Frank Act amended the Exchange Act to require ''a range of municipal financial advisors to register with the [Commission] and comply with regulations issued by the [MSRB].'' *See id.*

[1654] *See supra* text accompanying notes 129–131.

[1655] *See* Section 975(i) of the Dodd-Frank Act.

[1656] *See supra* notes 107–110 and accompanying text.

[1657] *See supra* notes 93–96 and accompanying text.

[1658] *See infra* Section VIII.D.1.a.

[1659] Investors could also benefit to the extent they consider whether a municipal advisor was involved in negotiating a municipal bond offering.

[1660] *See* 78 U.S.C. 78*o*–4(a)(2).

are designed to maintain the efficiency and effectiveness of the Commission's examination program for regulated entities. Rule 15Ba1–8 will assist the Commission in evaluating a municipal advisor's compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules.

C. Economic Baseline

The rules and forms adopted today establish a permanent registration regime for municipal advisors. The temporary registration regime, as described below,[1661] serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the final rules and forms are measured. The discussion below includes a description of the costs and benefits of the temporary registration regime (*i.e.,* the programmatic and registration costs and benefits) as well as approximate numbers of municipal advisors that would be affected by the final rules and forms adopted today.

By enacting Section 975 of the Dodd-Frank Act, Congress created a federal regulatory regime for municipal advisors that previously did not exist. In determining the economic baseline, the Commission recognizes that, effective October 1, 2010, any person that meets the statutory definition of municipal advisor [1662] is currently required to register with the Commission, unless a statutory exclusion applies.[1663] As discussed above, the Commission adopted a temporary registration regime to allow municipal advisors to satisfy temporarily the statutory registration requirement by submitting certain information, including disciplinary history of associated municipal advisor professionals, electronically through the Commission's public Web site on Form MA–T.[1664] The Commission does not impose registration or filing fees in connection with municipal advisor registration, either under the temporary registration regime or the permanent registration regime.

In addition to registering with the Commission, every municipal advisor is required to comply with the requirements imposed by Section 15B of the Exchange Act as well as rules established by the MSRB. For example, Section 15B(a)(5) prohibits a municipal advisor from engaging in any fraudulent, deceptive, or manipulative acts or practices when providing 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 when undertaking a solicitation of a municipal entity or obligated person.[1665] A municipal advisor is also deemed to have a fiduciary duty to its municipal entity clients.[1666]

The Dodd-Frank Act also provided the MSRB with authority to propose and adopt rules related to municipal advisors.[1667] The MSRB has already adopted some rules for municipal advisors.[1668] For example, MSRB Rule G–17 requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. In addition, prior to engaging in municipal advisory activities, a municipal advisor must register with the MSRB and pay a $100 initial fee and a $500 annual fee.[1669]

1. Programmatic Costs and Benefits of the Temporary Registration Regime

Subjecting municipal advisors to the requirements of the temporary registration regime has a number of programmatic costs and benefits. Municipal advisors may have incurred, and would continue to incur, costs to comply with the standards and rules discussed above that are currently applicable to municipal advisors by statute or MSRB rules.[1670] In addition, as discussed above, municipal advisors that have registered with the MSRB have incurred fees assessed by the MSRB and would continue to incur fees in each year registered with the MSRB.[1671]

Municipal advisors may also have incurred, and would continue to incur, costs in association with examinations by Commission staff. Section 15B of the Exchange Act authorizes the Commission, or its designee, to conduct periodic examinations of municipal advisors for compliance with the Exchange Act, the rules and regulations thereunder, and the rules of the MSRB.[1672] Since the beginning of fiscal year 2012 through fiscal year 2013, OCIE completed 19 examinations of municipal advisors. The time and cost involved in an examination varies depending on the size of the municipal advisor; whether the municipal advisor was also registered with the Commission as a broker-dealer and/or investment adviser; and whether Commission staff identified additional risks posed by the municipal advisor while onsite.[1673]

Municipal advisors, faced with the costs imposed by the temporary registration regime, may have responded in a number of ways. Municipal advisors that viewed the costs as too burdensome, or those with extensive disciplinary histories, may have decided to discontinue engaging in activities that

[1661] *See infra* notes 1662–1669 and accompanying text.

[1662] Section 15B(e)(4) of the Exchange Act defines ''municipal advisor'' as 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, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity. *See* 15 U.S.C. 78*o*–4(e)(4)(A). As discussed above, the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors. *See supra* text accompanying notes 129–131. Specifically, the definition of 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. *See* 15 U.S.C. 78*o*–4(e)(4)(B).

[1663] *See* 15 U.S.C. 78*o*–4(a)(1)(B); 15 U.S.C. 78*o*–4(e)(4)(C).

[1664] *See supra* notes 107–110 and accompanying text. *See also* Form MA–T, Glossary of Terms (defining ''associated municipal advisory professional''). Today, in a separate release, the Commission is extending the expiration date of the temporary registration regime to December 31, 2014. *See supra* note 115 and accompanying text.

[1665] *See* 15 U.S.C. 78*o*–4(a)(5).

[1666] *See* 15 U.S.C. 78*o*–4(c)(1). Section 975 of the Dodd-Frank Act did not define the contours of a municipal advisor's fiduciary duty to its municipal entity clients. Pursuant to Section 15B(b)(2)(L)(i) of the Exchange Act, the MSRB is authorized to prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients. *See* 15 U.S.C. 78*o*–4(b)(2)(L)(i). As discussed above, the Commission has direct oversight authority over the MSRB, including the ability to approve or disapprove the MSRB's rules. *See supra* note 1651 and accompanying text. For purposes of this economic analysis, Congress's imposition of a fiduciary duty on municipal advisors under Section 975 of the Dodd-Frank Act is part of the baseline.

[1667] *See* 15 U.S.C. 78*o*–4(b).

[1668] Although the MSRB has adopted some rules for municipal advisors, the MSRB has yet to detail many of the requirements that will apply to municipal advisors. For example, the MSRB has yet to establish standards of training, experience, competence, and other qualifications (*see* 15 U.S.C. 78*o*–4(b)(2)(A)); prescribe recordkeeping requirements (*see* 15 U.S.C. 78*o*–4(b)(2)(G)); provide continuing education requirements (*see* 15 U.S.C. 78*o*–4(b)(2)(L)(ii)); or provide professional standards (*see* 15 U.S.C. 78*o*–4(b)(2)(L)(iii)).

[1669] *See* MSRB Rule A–12 and MSRB Rule A–14. Section 15B(b)(2)(J) of the Exchange Act permits the MSRB to require municipal advisors to pay reasonable fees and charges. *See* 15 U.S.C. 78*o*–4(b)(2)(J). Other MSRB rules applicable to municipal advisors include MSRB Rules G–5 (Disciplinary Actions by Appropriate Regulatory Agencies; Remedial Notices by Registered Securities Associations), G–40 (Electronic Mail Contacts), and A–15 (requiring that a municipal advisor notify the MSRB if it ceases operations).

[1670] *See supra* notes 1665–1669 and accompanying text.

[1671] *See supra* note 1669 and accompanying text.

[1672] *See* 15 U.S.C. 78o–4(b)(2)(E); 15 U.S.C. 78o–4(c)(7)(A)(iii). *See also supra* note 1386 and accompanying text.

[1673] The onsite portion of an examination lasts approximately three business days.

would require them to register as municipal advisors (hereinafter referred to as ''exiting the market''). Other municipal advisors may have determined to consolidate with other municipal advisory firms to better manage the costs associated with the regulatory regime. Still others may have passed the additional costs of being a registered municipal advisor on to municipal entities and obligated persons in the form of higher fees.[1674] In addition, some persons that may have otherwise newly entered the municipal advisor market may have decided not to enter the market.

The Commission, however, is unable to estimate the number of municipal advisors that may have exited the market or consolidated with other municipal advisory firms as a result of the temporary registration regime because Form MA–T does not require a municipal advisor withdrawing from registration on Form MA–T to indicate the reasons for the withdrawal.[1675] Further, the Commission does not have the information necessary to estimate how many municipal advisors may have chosen to exit the market after the enactment of the Dodd-Frank Act but prior to the commencement of the temporary registration regime because such data is not currently available to the Commission or otherwise publicly available. Similarly, the Commission is unable to estimate the extent to which municipal advisors may have passed on to their clients the costs incurred to comply with the temporary registration regime because such data is not currently available to the Commission or otherwise publicly available. Although commenters asserted that such costs could be passed on to clients,[1676] commenters did not provide specific figures in this regard, making it difficult to evaluate these assertions.

Section 975 of the Dodd-Frank Act includes new investor protections, including protections for municipal entities and obligated persons when issuing, or investing the proceeds of, municipal securities.[1677] For example, municipal advisors are now subject to, among other things, a fiduciary duty to any municipal entity clients and are prohibited from engaging in any act, practice, or course of business which is not consistent with that fiduciary duty.[1678] These investor protections may have incentivized municipal advisors not to engage in misconduct. As discussed above, Section 15B provides the Commission with explicit authority to oversee the activities of municipal advisors, and since the beginning of fiscal year 2012 through fiscal year 2013, OCIE completed 19 examinations of municipal advisors.[1679] Similarly, Section 15B enhances municipal entity and obligated person protections by providing the Commission with explicit authority to bring disciplinary actions against municipal advisors for misconduct, including the ability to censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal advisor.[1680]

2. Registration Costs and Benefits of the Temporary Registration Regime

In the Temporary Registration Rule Release, the Commission identified certain costs and benefits of the temporary registration regime. Municipal advisors that have registered with the Commission on Form MA–T have incurred costs to gather the information required to complete the form and submit that information through the Commission's Web site, as well as to amend Form MA–T as necessary. In the Temporary Registration Rule Release, the Commission estimated that the total labor cost for all municipal advisors to complete Form MA–T would be approximately $735,000.[1681] The Commission also estimated that the total annual labor cost for all municipal advisors to amend Form MA–T would be approximately $147,000.[1682] In addition, the Commission estimated that the total cost for all municipal advisors to hire outside counsel to review their compliance with the requirements of Rule 15Ba2–6T and Form MA–T would be approximately $400,000.[1683]

In the Temporary Registration Rule Release, the Commission recognized the possibility that the cost of registering could be passed on to municipal entities in the form of higher fees. However, the Commission anticipated that any increase in municipal advisory fees attributable to the temporary registration regime would be minimal given the relatively small magnitude of these costs and the large number of municipal entity issuers.[1684]

Subjecting municipal advisors to the requirements of the temporary registration regime may have had a number of benefits. The temporary registration regime may have enabled municipal entities and obligated persons to become better informed about a municipal advisor, including disciplinary history of associated municipal advisor professionals,[1685] by accessing and reviewing the municipal advisor's Form MA–T on the Commission's Web site. In addition, because information submitted on Form MA–T is consolidated in a single online location, municipal entities and obligated persons may have been able to access this information more efficiently, and thereby, at a lower cost.[1686] In

[1674] The Commission recognized in the Proposal that the cost of becoming subject to registration for the first time could lead some municipal advisors that are not particularly active to leave the business. *See* Proposal, 76 FR 876. The Commission received several comment letters that asserted the costs of the regulatory regime could cause municipal advisors to exit the market, consolidate with other firms, or pass the costs incurred to comply with the regime on to clients. *See, e.g.,* Public FA Letter (''The regulations imposed on small firms like ours could be time consuming and costly enough to either put us out of business or cause small firms to merge with larger firms or to create larger firms.''); Fieldman Rolapp Letter (''Most firms, regardless of revenue amount, are small businesses with insufficient margins to bear excessive regulatory burden''); Ranson Financial Consultants Letter (''Our options [in relation to compliance costs] may include joining another firm or simply go out of business''); UFS Bancorp Letter (''[T]he Proposed Rules will have economic costs. These will either come out of the bottom lines of firms or be passed along to municipal clients in the form of fee increases.'').

The Commission is unable to estimate the number of persons who may have decided not to enter the municipal advisor market because such data is not currently available to the Commission or otherwise publicly available. However, the Commission notes that, as discussed above, approximately 205 municipal advisers filed an initial Form MA–T in 2011 and approximately 115 filed an initial Form MA–T in 2012. *See supra* Section VII.C.

[1675] As discussed above, approximately 22 municipal advisors withdrew from registration on Form MA–T in 2011 and 24 withdrew from registration in 2012. *See supra* Section VII.D.4.

[1676] *See supra* note 1674.

[1677] *See supra* note 1653 and accompanying text.

[1678] *See* 15 U.S.C. 78*o*–4(c)(1).

[1679] *See supra* notes 1672–1673 and accompanying text. The onsite portion of an examination lasts approximately three business days.

[1680] *See* 15 U.S.C. 78o–4(c)(2). The Commission also has the 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. *See* 15 U.S.C. 78o–4(c)(4); Rule 15Bc4–1.

[1681] *See* Temporary Registration Rule Release, 75 FR 54474 (calculating the estimated total labor cost for all municipal advisors to complete Form MA–T). This estimate includes all of the time necessary to research, evaluate, and gather all of the information requested in Form MA–T and all of the time necessary to complete and submit the form. *See id.* at 54473.

[1682] *See id.* at 54474 (calculating the estimated total labor cost for all municipal advisors to amend Form MA–T).

[1683] *See id.* (calculating the estimated total cost for all municipal advisors to hire outside counsel to review their compliance with the requirements of Rule 15Ba2–6T and Form MA–T).

[1684] *See id.*

[1685] *See id.* at 54469. *See also supra* note 1664 and accompanying text.

[1686] *See* Temporary Registration Rule Release, 75 FR 54474. The Commission is unable to estimate

addition, under the temporary registration regime, municipal advisors are required to disclose disciplinary history on Form MA–T, which disclosure may further deter municipal advisors from engaging in misconduct. As discussed in the Proposal, the information currently required by Form MA–T is not reviewed by the Commission or its staff prior to registration, although the Commission retains full authority to review such information and examine any registered municipal advisor at any time.[1687]

3. Municipal Advisor Market

The discussion below includes approximate numbers of municipal advisors that would be affected by the final rules and forms adopted today. As discussed above, according to MA–T data as of December 31, 2012, there were approximately 1,110 Form MA–T registrants. Of these Form MA–T registrants, as of December 31, 2012, approximately 901 were also registered as municipal advisors with the MSRB, as they are required to do prior to engaging in municipal advisory activities.[1688] For the reasons discussed below, the Commission believes that the number of Form MA–T registrants may not be an accurate representation of the number of municipal advisors and that MSRB data represents a better basis on which to estimate the number of municipal advisors active in the market.

The Commission believes that a number of persons, recognizing that the Commission does not impose any fees for registration, may have registered with the Commission as municipal advisors out of an initial overabundance of caution.[1689] Although some current Form MA–T registrants may not have registered with the MSRB because of uncertainty regarding the scope of the temporary registration regime, others may have determined in the intervening time after October 1, 2010, that registration with the MSRB was not required because they were not engaging in municipal advisory activities. The Commission staff understands based on discussions with market participants that these Form MA–T registrants may have retained Commission registration because there are no associated fees to maintain such registration.[1690] Accordingly, based on the MSRB registration data, the Commission now estimates that 910 municipal advisors are currently active in the municipal advisor market.[1691]

MSRB data and MA–T data also provide information regarding the types of services provided by registered municipal advisors.[1692] According to MSRB data,[1693] as of December 31, 2012, 682 municipal advisors identified themselves as financial advisors; 192 identified themselves as guaranteed investment contract brokers or advisors; 272 identified themselves as placement agents; 159 identified themselves as solicitors or finders; 246 identified themselves as swap or derivative advisors; 135 identified themselves as third-party marketers; and 201 indicated they provide other services.[1694] In addition, according to MA–T data, as of December 31, 2012, 226 municipal advisors were also registered with the Commission as broker-dealers; 39 were also registered with the Commission as investment advisers; and 65 were registered with the Commission as both broker-dealers and investment advisers. As discussed above, Form MA–T requires municipal advisors to disclose any disciplinary history of associated municipal advisor professionals.[1695] According to MA–T data, as of December 31, 2012, 169 registered municipal advisors had disclosed prior disciplinary history.

The Commission and the MSRB do not capture data regarding the concentration [1696] of the municipal advisor market. The Commission staff has evaluated data available in Thomson Reuters' SDC Platinum database (''SDC Platinum Database'') [1697] to analyze concentration. To determine the number of issue offerings in 2012, the Commission staff assumed that bonds issued on the same day by the same issuer were part of the same issue.[1698] Under this assumption, and removing any deals for which SDC Platinum Database did not record a CUSIP, the Commission staff found that, in 2012, there were 13,288 municipal bond deals, of which approximately 8,237 used a financial advisor and 3,074 did not use a financial advisor. SDC Platinum Database was not able to provide information regarding the use of a financial advisor for the other 1,977 municipal bond deals. The 8,237 municipal bond deals that used a financial advisor were advised by approximately 318 different financial advisors, with the 50 most-active advisors advising approximately 80% of

the amount of time and money municipal entities may have saved by reviewing Form MA–T rather than engaging in an RFP process or searching other regulatory documents because such data is not currently available to the Commission or otherwise publicly available. The Commission believes that the ability to access information, including disciplinary history, on municipal advisors in a single location benefits municipal entities and obligated persons by reducing the need to search for other regulatory documents of those municipal advisors that are registered, or have associated persons that are registered, in another capacity. In addition, information submitted on Form MA–T may be the only source of information about some municipal advisors.

[1687] *See* Proposal, 76 FR 860. *See also infra* note 1705 and accompanying text.

[1688] The Commission obtained this estimate by comparing the list of MSRB registrants to the Commission's list of Form MA–T registrants as of December 31, 2012.

[1689] As discussed above, prior to engaging in municipal advisory activities, a municipal advisor must register with the MSRB and pay a $100 initial fee and a $500 annual fee. *See supra* note 1669 and accompanying text.

[1690] The Commission staff understands that some municipal advisors may have maintained Form MA–T registration instead of withdrawing to wait and see whether registration would be required under the permanent registration regime, while others may not have realized they could withdraw or may have determined not to withdraw for other reasons.

[1691] This estimate rounds to the nearest higher multiple of ten the number of municipal advisors that are registered with the MSRB to engage in municipal advisory activities.

[1692] The three principal types of municipal advisors are: (1) Financial advisors, including, but not limited to, brokers, dealers, and municipal securities 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 (''municipal financial advisors''); (2) investment advisers that advise municipal entities on the investment of public monies, including the proceeds of municipal securities (''municipal investment advisers''); and (3) third-party marketers and solicitors (''solicitors''). For purposes of this economic analysis, the Commission uses these terms to describe these distinct types of professionals separately, while using the term ''municipal advisor'' to describe all municipal advisors generally. As discussed above, for clarity, the Commission notes that financial advisors as referred to herein also include swap advisors, including some that are registered with the CFTC or the SEC in other capacities, that provide advice to municipal entities on their use of municipal financial products.

[1693] Although municipal advisors registering with the MSRB identify the types of services they provide, the Commission staff understands that the MSRB does not validate this information.

[1694] Some municipal advisors registered with the MSRB provide more than one type of service. According to MA–T data, as of December 31, 2012, 733 municipal advisors provided advice concerning the issuance of municipal securities; 496 provided advice concerning the investment of the proceeds of municipal securities; 322 provided advice concerning guaranteed investment contracts; 365 provided the recommendation and/or brokerage of municipal escrow investments; 365 provided advice concerning the use of municipal derivatives (*e.g.,* swaps); 383 were third-party marketers, placement agents, solicitors, or finders; 470 provided the preparation of feasibility studies, tax or revenue projections, or similar products in connection with offerings or potential offerings of municipal securities; and 253 provided other services. The Commission staff has not validated the information provided on Form MA–T.

[1695] *See supra* note 1664 and accompanying text.

[1696] Concentration refers to how many municipal advisors handle a significant percentage of municipal advisory business.

[1697] SDC Platinum is a database that tracks, among other things, information on municipal bond issues, including new municipal bond issues, municipal private placements, and municipal reoffering issues, but not remarketing issues.

[1698] This excludes deals where SDC does not record a CUSIP or an offering date.

the advised deals, or approximately 74% by dollar volume issued of advised deals.

D. Analysis of Final Rules and Forms

Below, the Commission addresses the costs and benefits of the final rules and forms against the context of the economic baseline defined above, both in terms of the specific changes from the baseline as well as in terms of overall impact on the municipal advisor market. The Commission also addresses the costs and benefits of the requirements that municipal advisors register with the Commission and maintain the books and records required by Rule 15Ba1–8. In considering these costs, benefits, and impacts, the Commission addresses, among other things, comments received, modifications made to the proposed rules and forms, and reasonable alternatives, where applicable.

At the outset, the Commission notes that, where possible, it has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from adopting these rules and forms. In many cases, however, the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate. For example, the Commission does not have the information necessary to provide a reasonable estimate of the willingness of municipal entities and obligated persons to utilize municipal advisors and improvements in investor protection. In general, secondary data regarding the municipal advisory market that would assist the Commission in producing quantitative analyses are largely unavailable, and, other than the academic papers cited in the Proposal and this release, few studies on municipal securities have attempted to undertake the efforts to collect such secondary data. Additionally, the costs incurred by a municipal advisor to comply with the final rules and forms generally will depend on its size and the complexity of its business activities. Because the size and complexity of municipal advisors vary significantly,[1699] their costs to comply with the final rules and forms could also vary significantly.

The Commission received many comments on the proposed rules and forms, and has incorporated many of the suggested alternatives into the final rules and forms and rejected, after careful consideration, other suggested alternatives, as fully discussed in Section III. The policy choices made to accept or reject the alternatives suggested by the commenters have been informed by the costs and benefit considerations. In particular, as stated above, the Commission is mindful of the programmatic, assessment, registration, and recordkeeping costs associated with the municipal advisor regulatory regime.

1. Broad Economic Considerations

a. Benefits of the Final Rules and Forms

The Commission believes that the final rules and forms should result in a number of benefits, including those discussed throughout this economic analysis. As discussed below, the Commission has sought to subject to the municipal advisor regulatory regime those persons that should be regulated as municipal advisors in light of the purposes of the Dodd-Frank Act to regulate those persons that engage in municipal advisory activities. The final rules and forms should increase the amount of publicly available information about municipal advisors and enhance the ability of securities regulators to oversee municipal advisors.

The permanent registration regime will increase the amount of information available about municipal advisors relevant to the baseline.[1700] The forms will require municipal advisors to provide information about their businesses, including disciplinary histories and potential conflicts of interest (as well as information that may be useful in assessing conflicts of interest), beyond what is required to be disclosed on Form MA–T. Although much of the additional information required by Form MA is already publicly available with respect to municipal advisors that are already registered with the Commission as investment advisers or broker-dealers, many municipal advisors that are not registered with the Commission will make this type of information publicly available for the first time.[1701] In addition, while municipal advisors are required to disclose disciplinary history for some associated persons on Form MA–T, municipal advisors will be required to disclose on Form MA disciplinary history for all associated persons.[1702]

To the extent municipal entities and obligated persons consider disciplinary history and conflict of interest information important in selecting a municipal advisor, the permanent registration regime may reduce selection of 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. Moreover, municipal advisors, knowing that more-detailed disciplinary history must now be disclosed, may be further incentivized to avoid engaging in misconduct (or may exit the market).[1703] In addition, municipal advisors, knowing that conflicts of interest must now be disclosed, may also be more likely to avoid associations that create conflicts of interest or may be more likely to avoid recommending financial intermediaries or investments for which conflicts of interest might be present. The increased dissemination of information regarding disciplinary history and conflicts of interest may lead to improved quality-based competition among municipal advisors to the extent municipal advisors rely on this information in the municipal advisor selection process.

The Commission also believes that the permanent registration regime will enhance the ability of the Commission and other regulators to oversee the conduct of municipal advisors, as contemplated by the Dodd-Frank Act, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors.[1704] The Commission staff will review applications for registration and by order grant registration or the Commission will institute proceedings

[1699] *See supra* note 1694 and accompanying text.

[1700] As discussed below, the permanent registration regime will also impose registration and recordkeeping costs on municipal advisors. *See infra* Section VIII.D.3–4.

[1701] For example, little is currently known about solicitors, and disciplinary histories and conflicts of interest about many solicitors will be disclosed for the first time.

[1702] Form MA–T requires disclosure of disciplinary information of a subgroup of associated persons who are closely associated with a municipal advisor's municipal advisory activities (*i.e.,* those who are primarily engaged in a municipal 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 a municipal advisor's municipal advisory activities, or are responsible for executive management of the municipal advisor).

[1703] As discussed below, the Commission is unable to estimate the number of municipal advisors that have exited the market due to the temporary registration regime or that will exit the market due the permanent registration regime because Form MA–T does not require a municipal advisor withdrawing from registration from Form MA–T to indicate the reasons for withdrawal. *See infra* Section VIII.D.1.b. As a result of the requirement that municipal advisors disclose disciplinary histories, those municipal advisors that may discontinue activity in the market may include disproportionately more municipal advisors with disciplinary records. Further, such public disclosure may deter municipal advisors that have significant disciplinary histories from entering the market.

[1704] *See also infra* notes 1758–1759 and accompanying text.

to determine whether registration should be denied.[1705] Because Rule 15Ba1–2 provides that both Form MA and Form MA–I constitute a ''report'' within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act, it is unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of material fact or omit to state a material fact in Form MA and Form MA–I. The Commission believes that a municipal advisor's knowledge of the Commission's authority to examine the municipal advisor and to sanction the municipal advisor for false and misleading statements could help ensure the reliability of the information submitted by municipal advisors under the permanent registration regime, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors.

In addition, the Commission's examination staff will be able to use the information provided in Form MA and Form MA–I as a tool to prioritize and plan examinations. By securing information regarding municipal advisors through EDGAR, relative to the baseline, Commission staff should be able to more efficiently retrieve and analyze the data it needs to carry out its mission with respect to municipal advisory activities effectively, such as by identifying potentially violative activities and risky municipal advisory firms.[1706] Moreover, Rule 15Ba1–8 will assist the Commission in evaluating a municipal advisory firm's compliance with Section 15B of the Exchange Act,[1707] rules and regulations promulgated thereunder, and MSRB rules. By requiring that municipal advisory firms maintain specific types of information, the final rules will enhance the ability of regulators to perform more-efficient inspections and examinations and increase the likelihood of identifying improper conduct at earlier stages in an inspection or examination. In addition, municipal advisory firms may benefit from recordkeeping practices developed pursuant to the requirements of Rule 15Ba1–8 by having their operations interrupted for shorter time periods in response to inspections or examinations.

The requirement that a non-resident municipal advisor file Form MA–NR and obtain an opinion of counsel in connection with the municipal advisor's initial application, as well as annual updates to Form MA–NR and the opinion of counsel, will also help to enhance the Commission's oversight of non-resident municipal advisors, which may promote the willingness of municipal entities and obligated persons to utilize municipal advisors. The Commission believes that requiring Form MA–NR and an opinion of counsel could improve the Commission's oversight of municipal advisors by: minimizing any legal or logistical obstacles that the Commission may encounter when attempting to effect service; conserving Commission resources; and avoiding potential conflicts of law. The requirement that a non-resident municipal advisory firm obtain an opinion of counsel that it can provide access to books and records and can be subject to inspection and examination will allow the Commission to better evaluate and monitor a municipal advisory firm's ability to meet the requirements of registration. These benefits will be the same across all types of municipal advisor—municipal financial advisors, municipal investment advisers, and solicitors.

To the extent that the registration and recordkeeping requirements result in more-effective examinations, the enhanced ability to monitor municipal advisors could lead to increased efficiency relative to the baseline. Enhanced oversight of municipal advisors due to the registration and recordkeeping requirements could improve capital formation relative to the baseline to the extent enhanced oversight increases the willingness of municipal entities and obligated persons to utilize municipal advisors, and municipal entities and obligated persons, in turn, issue more debt or debt with better terms.[1708] To the extent that investors decide to make greater investments in the municipal securities market, efficiency could increase as capital is put to a more-efficient use.

b. Potential Changes to the Municipal Advisor Market

The Commission recognizes that the final rules and forms may result in changes to the municipal advisor market. As discussed below, municipal advisors will incur programmatic costs as a result of the statutory municipal advisor regulatory regime.[1709] In addition, municipal advisors will incur the registration and recordkeeping costs that result from the final rules and forms.[1710] The Commission recognizes that, as a result of these costs, municipal advisors may decide to exit the market, consolidate with other firms, or pass the costs on to municipal entities and obligated persons in the form of higher fees.

Some municipal advisors currently registered with the Commission may decide to exit the market or reduce services provided to municipal entities or obligated persons because of the costs associated with the final rules and forms. One commenter believed that the Commission did not address in the Proposal potential public costs from a reduction of services to municipal entities.[1711] While the Commission recognizes that some municipal advisors may exit the market as a result of the costs associated with the final rules and forms relative to the baseline, the Commission believes municipal advisors may exit the market for a number of reasons, including business reasons separate from reasons involving the costs associated with the final rules and forms. The Commission anticipates that some exits will result from municipal advisors' unwillingness to disclose required information to the Commission. The Commission believes that municipal advisors that have been subject to past disciplinary actions may decide to exit the market rather than disclose that information, and that the departure of such ''bad actors'' could improve the quality of the market for municipal advisory services and,

[1705] *See* 78 U.S.C. 78*o*–4(a)(2).

[1706] In addition, municipal entities, obligated persons, and other market participants will be able to perform their own analyses using EDGAR and provide some market monitoring. Information submitted on Form MA and Form MA–I will be tagged in XML format, which may improve the Commission staff's ability to retrieve and analyze data. In addition, tagging information in XML format could allow municipal entities and obligated persons to perform better research into municipal advisors, which could help improve efficiency if this increased monitoring results in greater market discipline of municipal advisors.

[1707] 15 U.S.C. 78*o*–4.

[1708] *See infra* notes 1830–1831 and accompanying text. Investor willingness to invest in municipal bond offerings may increase to the extent that the municipal entity issuing bonds used a municipal advisor and investors understand and consider the benefits of municipal advisor registration.

[1709] *See infra* Section VIII.D.2. The Commission expects that the costs and benefits resulting from the statutory municipal advisory regulatory regime will likely accrue primarily at the programmatic level, and that many of these costs are accounted for in the baseline. *See supra* Sections VIII.C.1.

[1710] *See infra* Section VIII.D.3–4.

[1711] *See* Financial Services Roundtable Letter (''Given the burden of registering as a municipal advisor, particularly for a small bank, we believe that there is a likelihood that smaller banks that offer a few products to a small number of municipal entities providing services in their communities would elect to discontinue serving municipal entities.''). *See also* Public FA Letter; Ranson Financial Consultants Letter.

therefore, benefit municipal entities and obligated persons.[1712]

In addition, the costs associated with the final rules and forms relative to the baseline may lead some municipal advisors to consolidate with other municipal advisors, rather than exit the market.[1713] For example, some municipal advisors may determine to consolidate with other municipal advisors in order to benefit from economies of scale (*e.g.,* by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the final rules and forms.

The Commission, however, is unable to estimate the number of municipal advisors that have exited the market or consolidated with other firms as a result of the temporary registration regime because Form MA–T does not require a municipal advisor withdrawing from registration on Form MA–T to indicate the reasons for withdrawal. Similarly, the Commission is unable to estimate the number of municipal advisors that will exit the market or consolidate with other firms as a result of the final rules and forms. In addition, the Commission is not aware of any municipal advisors exiting the market or consolidating with other firms as a result of the temporary registration regime.

The Commission recognizes that some of the municipal advisors that may exit the market could be small entity municipal advisors that exit the market for financial reasons and that such exits from the market may lead to a reduced pool of municipal advisors. In the Final Regulatory Flexibility Analysis below, after comparing the estimated registration costs with a small municipal advisory firm's annual revenue, the Commission discusses alternatives considered to accomplish the objectives of the permanent registration regime while minimizing any significant adverse impact on small municipal advisors.[1714] As discussed in the Final Regulatory Flexibility Analysis, the requirements under the final rules and forms are designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act. In addition, as discussed below, the Commission believes that the market for municipal advisory services is likely to remain competitive despite the potential exit of municipal advisors, including small entity municipal advisors.[1715]

Some municipal advisors may pass the costs associated with the rules and forms on to municipal entities and obligated persons in the form of higher fees. For example, one commenter argued that the rules will have economic costs that will either come out of the bottom lines of firms or be passed along to municipal clients in the form of fee increases.[1716] Although commenters asserted that such costs could be passed on to clients,[1717] commenters did not provide specific estimates, and the Commission does not have the information necessary to provide a reasonable estimate of the extent to which municipal advisors may pass costs on to clients given the lack of publicly available information on municipal advisory fees.

The Commission believes that the market for municipal advisory services is likely to remain competitive despite the potential exit of municipal advisors, consolidation of municipal advisors, or lack of new entrants into the market.[1718] As discussed above, the Commission estimates that approximately 100 new entrants to the market will register on Form MA each year [1719] and that approximately 30 municipal advisors will withdraw from Form MA registration each year.[1720] Because the Commission expects that new entrants to the municipal advisor market will exceed departures therefrom, the Commission does not expect exits from the market or consolidation of municipal advisors to result in reduced competition.[1721] In addition, the level of competition in the existing markets for each type of municipal advisor—municipal financial advisors, municipal investment advisers, and solicitors—suggests, based on data available to the Commission,[1722] that exits from the market, consolidation, or lack of new entrants into the market are unlikely to lead to market concentration levels at which the remaining municipal advisors are able to increase prices significantly.[1723] Accordingly, the Commission does not expect the departure of municipal advisors from the market to result in a significant increase in the cost of municipal advisory services.

In addition, the registration and recordkeeping costs should not impact efficiency or capital formation because those costs are unlikely to reduce the utilization of municipal advisors by municipal entities and obligated persons. The Commission believes that any increase in municipal advisory fees attributable to the registration and recordkeeping costs of the permanent registration regime will be minimal given the average cost per municipal advisory firm [1724] and the relatively small magnitude of these costs compared to the large number of municipal entity issuers per municipal advisory firm. The Commission recognizes, however, that for smaller municipal advisors with fewer clients the registration and recordkeeping costs may represent a greater percentage of annual revenues, and thus, such advisors may be more likely to pass those costs along to clients.[1725]

c. Assessment Costs

Under the temporary registration regime, market participants may have incurred costs to determine whether their business activities meet the definition of municipal advisor or if a

[1712] The Commission recognizes that municipal advisors that exit the market would lose any revenue that would have accrued from providing municipal advisory services. Municipal entities and obligated persons could benefit, however, from not having municipal advisors who do not want to comply with the regulatory regime or other bad actors in the market.

[1713] *See, e.g.,* Public FA Letter (''The regulations imposed on small firms like ours could be time consuming and costly enough to either put us out of business or cause small firms to merge with larger firms or to create larger firms.''); Ranson Financial Consultants Letter (''Our options [in relation to compliance costs] may include joining another firm or simply go out of business'').

[1714] *See infra* Section IX.D.

[1715] *See infra* notes 1718–1723 and accompanying text.

[1716] *See* UFS Bancorp Letter. *See also* SIFMA Letter I.

[1717] *See, e.g.,* SIFMA Letter I; UFS Bancorp Letter.

[1718] The Commission recognizes that the requirements to register with the Commission and maintain certain books and records, and the associated costs, will increase the burdens on those seeking to enter the municipal advisor market, which may negatively impact competition in the municipal advisor market.

[1719] *See supra* note 1470 and accompanying text.

[1720] *See supra* note 1531 and accompanying text.

[1721] The Commission does not expect an effect on capital formation due to new entrants to the municipal advisor market or from exits from the market.

[1722] As indicated above, as of December 31, 2012, approximately 901 municipal advisors registered with the Commission on Form MA–T were also registered with the MSRB, as they are required prior to engaging in municipal advisory activities. *See supra* note 1688 and accompanying text. With respect to municipal advisors registered with the MSRB, approximately 682 were financial advisors; 192 were guaranteed investment contract brokers or advisors; 272 were placement agents; 159 were solicitors or finders; 246 were swap or derivative advisors; 135 were third-party marketers; and 201 provided other services. *See supra* note 1694 and accompanying text (discussing this data as well as similar MA–T data).

[1723] As discussed above in the economic baseline, the municipal advisor market is not highly concentrated. *See supra* Section VIII.C.3. *See also supra* note 1694 and accompanying text (discussing MSRB and MA–T data regarding services provided by municipal advisors registered with the MSRB and the Commission).

[1724] As discussed above, the Commission estimates that the average cost per municipal advisory firm to register with the Commission will be approximately $8,092. *See infra* note 1813 and accompanying text.

[1725] *See infra* notes 1991–1998 and accompanying text.

statutory exclusion applies, and thus, whether registration with the Commission as a municipal advisor and compliance with the requirements imposed by Section 15B of the Exchange Act as well as rules established by the MSRB was required.[1726] Prior to the enactment of the Dodd-Frank Act and the Commission's adoption of the temporary registration regime, there were no assessment costs with respect to municipal advisor regulation. The Commission received a number of comments in connection with the 2010 interim temporary final rule seeking guidance regarding the scope of the statutory definition of municipal advisor and the statutory exclusions therefrom.[1727]

In the Proposal, the Commission stated its belief that the direct costs for respondents to read and apply the definitions in proposed Rule 15Ba1–1(d) would be minimal.[1728] The Commission received several comments regarding the costs to interpret the proposed definition of municipal advisor, proposed interpretations of the statutory exclusions, and proposed exemptions.[1729] One commenter asserted that ''given that Form MA and the related rules are new, . . . outside legal fees could easily exceed $25,000 for a financial institution that provides a variety of services to municipal clients.'' [1730]

Although the above comment appears to be directed at the Commission's estimate of the costs to engage outside counsel in connection with completing Form MA, the Commission recognizes that many persons will incur assessment costs to determine whether registration as a municipal advisor is required under the final rules. The Commission, therefore, has reconsidered the direct costs for respondents to read and apply the definitions in Rule 15Ba1–1(d). The Commission recognizes that some market participants are likely to seek legal counsel for interpretation of various aspects of the rule, particularly to determine whether the market participant's business activities meet the definition of municipal advisor or whether an exclusion or exemption from the definition of municipal advisor is available. The Commission believes that the assessment costs may vary depending on the relevant facts and circumstances, including the complexity of the market participant's business activities. The Commission also now believes that for larger financial institutions with more complex businesses the assessment costs could range up to $25,500, as indicated by a commenter.[1731]

The Commission does not have the information necessary to provide a point estimate of the potential assessment costs because the Commission believes the assessment costs associated with determining whether a market participant is a municipal advisor under Section 15B of the Exchange Act will vary. However, based on the Commission staff's understanding of the industry and comments received,[1732] the Commission estimates that the costs associated with undertaking this determination may range from $379 to $25,500.[1733] The Commission believes that many entities are clearly municipal advisors and that an in-house attorney, without the assistance of outside counsel, could make such a determination in one hour. If an entity's business is more complex, the Commission estimates the assessment could require approximately 25 hours of in-house counsel time and 40 hours of outside counsel time.

The Commission believes that the assessment costs associated with determining whether a person would be required to register as a municipal advisor would be greater in the absence of the rules the Commission is adopting today. The Commission believes the rules adopted today provide extensive guidance to market participants and should reduce the number of requests for no-action relief and other guidance from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.

In particular, to further facilitate market participants' analysis of whether their activities would require them to register as a municipal advisor, the Commission has adopted several definitions that are consistent with existing regulatory definitions. For example, the Commission is adopting a definition of obligated person [1734] that is generally consistent with Rule 15c2–12. This definition will provide further protections for certain entities that participate in borrowing in the municipal securities market, ensure uniformity among rules relating to that market, and provide clearer guidance to market participants. In addition, the consistency with Rule 15c2–12 will likely reduce any confusion and, thus, may reduce the cost of compliance by allowing advisors to more quickly and accurately determine whether their clients are obligated persons. The Commission also believes that the materiality standard for secondary market disclosure in Rule 15c2–12 is an appropriate standard to identify those obligated persons that should have the protections afforded by Section 15B of the Exchange Act.[1735]

Similarly, as discussed above, the Commission is adopting a definition of ''proceeds of municipal securities'' that is similar to the definition of proceeds for purposes of the arbitrage rules, except that it applies to both taxable and tax-exempt municipal securities, which should lead to lower assessment costs

[1726] *See supra* notes 1662–1669 and accompanying text.

[1727] *See* letters from Brad R. Jacobson, dated September 7, 2010; John J. Wagner, Kutak Rock LLP, dated September 28, 2010; Joy A. Howard, Principal, WM Financial Strategies, received October 5, 2010; Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, received October 8, 2010; Amy Natterson Kroll & W. Hardy Callcott, Bingham McCutchen LLP, on behalf of the National Association of Energy Service Companies, dated October 13, 2010; Carolyn Walsh, Vice-President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, Deputy General Counsel, ABA Securities Association, dated October 13, 2010; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 15, 2010.

[1728] *See* Proposal, 76 FR 873.

[1729] *See, e.g.,* SIFMA Letter I; ACLI Letter; Financial Services Roundtable Letter.

[1730] *See* Financial Services Roundtable Letter.

[1731] *See supra* note 1730. The Commission believes that different market participants will need to undertake different analyses in relation to the definition of municipal advisor and exclusions and exemptions therefrom. The estimate of assessment costs is intended to include analysis of the exclusions and exemptions, although the Commission separately discusses the impacts of the interpretations of the exclusions and exemptions on assessment costs below. *See infra* Section VIII.D.5–6 (discussing the exclusions and exemptions).

[1732] *See supra* note 1730.

[1733] The average cost incurred by market participants is based on the estimated amount of time that the staff believes would be required for both in-house counsel and outside counsel to assess whether a market participant is a municipal advisor, as that term is defined in Section 15B of the Exchange Act (15 U.S.C. 78*o*–4(e)(4)) and the final rules. For the calculation of the hourly rate for an in-house attorney, see *infra* note 1779. The Commission estimates the costs for outside legal services to be $400 per hour. For an explanation of the outside counsel cost estimate, see *supra* note 1538. Accordingly, the Commission estimates the cost on the high end of the range to be $25,475 ($9,475 (based on 25 hours of in-house counsel time × $379) + $16,000 (based on 40 hours of outside counsel time × $400). This estimate is rounded by two significant digits to avoid the impression of false precision of the estimate. In addition, as discussed below, the Commission estimates that the average cost per municipal advisory firm to register with the Commission will be $8,092. *See infra* note 1813.

[1734] *See supra* Section III.A.1.b.iii.

[1735] Similarly, in response to commenters, the Commission is providing exemptions from the definition of municipal advisor for swap dealers that will apply the safe harbor requirements applicable to the parties to such transactions under the existing CFTC regulatory regime and, therefore, will apply consistent and comparable protections to municipal entities and obligated persons as under that regime. *See* Rule 15Ba1–1(d)(3)(v); *supra* Section III.A.1.c.vi.

for many firms.[1736] Because the arbitrage rules are central to tax-exempt municipal securities, the Commission believes that market participants will be familiar with and able to understand easily the scope of ''proceeds of municipal securities.'' [1737] Further, the Commission believes that the definition appropriately limits the time and cost of compliance for a person to determine whether it must register as a municipal advisor because if a person makes a reasonable inquiry of a knowledgeable municipal entity or obligated person official and is informed in writing that monies are not proceeds of municipal securities, then absent reason to know otherwise, they are not proceeds of municipal securities.[1738] While municipal entities and obligated persons generally already track proceeds of tax-exempt municipal securities,[1739] and thus, should not incur additional costs in tracking such monies, municipal entities and obligated persons may incur additional costs in tracking proceeds of taxable municipal securities. However, the Commission believes that these costs will not be substantial because municipal entities currently trace proceeds of taxable bonds for non-tax purposes, such as for compliance with a bond indenture or resolution.

The Commission also believes the interpretations of the statutory exclusions adopted today should reduce assessment costs. For example, the Commission has provided examples of activities outside the scope of serving as an underwriter of municipal securities for purposes of the underwriter exclusion.[1740] Similarly, the Commission has clarified the types of activities that would fall outside of the other statutory exclusions.[1741]

2. Definition of Municipal Advisor and Related Terms

a. Programmatic, Registration, and Recordkeeping Costs and Benefits

As discussed above, there are programmatic costs and benefits that flow from the statutory municipal advisor regulatory regime. Given the limitations on the Commission's ability to conduct a quantitative assessment of the programmatic costs and benefits associated with the definition of municipal advisor,[1742] the Commission has considered these costs and benefits primarily in qualitative terms.[1743] In addition, as discussed below, the Commission has quantified many of the registration and recordkeeping costs that result from the final rules and forms. Relying on the programmatic, registration, and recordkeeping costs and benefits, the Commission believes it is possible to identify those persons that, because of the activities in which they engage, appear to be the types of persons for which the statutory requirements of Section 975 of the Dodd-Frank Act were created.[1744]

As previously stated, the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors.[1745] The definition of municipal advisor the Commission is adopting today is designed to provide guidance that parties can use in determining whether registration as a municipal advisor is required. In determining the appropriate scope of the definition of municipal advisor, the Commission considered what types of persons should be regulated as municipal advisors in light of the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities, the overall regulatory framework, and information currently available. The Commission has therefore sought to adopt a definition of municipal advisor that would capture those persons without imposing programmatic, registration, and recordkeeping costs on persons for which regulation currently may not be justified in light of the purposes of the Dodd-Frank Act. The Commission believes that this approach should help maximize the benefits provided by the municipal advisor regulatory regime while minimizing costs imposed on market participants where consistent with investor protection. Further, because the definition of municipal advisor and related terms adopted today are consistent with the definitions in Section 15B(e) of the Exchange Act and the purposes of the Dodd-Frank Act,[1746] the Commission believes that those persons that currently meet the definition of municipal advisor under the final rules and for which a statutory exclusion is not available should already be registered with the Commission and the MSRB under the temporary registration regime.

As discussed in the PRA, the Commission estimates that approximately 910 municipal advisory firms, including sole proprietors, will register with the Commission under the permanent registration regime.[1747] In addition, the Commission anticipates that the exemption for persons providing advice with respect to investment strategies that are not plans or programs for the investment of proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments [1748] could reduce the estimated number of initial Form MA applicants. Likewise, the Commission anticipates the additional exemptions adopted today could also reduce the estimated number of initial Form MA applicants.[1749]

Because the Commission has interpreted the definition of municipal advisor consistent with the statute, it believes that any differences from the baseline with regard to the number of municipal advisors required to register with the Commission should be minimal as those persons should have already registered under the temporary registration regime. In addition, any

[1736] *See supra* text accompanying note 1733.

[1737] The Commission recognizes that some entities may not be familiar with the arbitrage rules and, thus, that any benefits recognized from the Commission's reliance on the arbitrage rules may be reduced.

[1738] Similarly, the Commission is including a reasonable inquiry qualification in the definition of ''municipal escrow investments.'' *See* Rule 15Ba1–1(h)(2). *See also* notes 383–384 and accompanying text.

[1739] *See supra* notes 361–362 and accompanying text.

[1740] *See supra* Section III.A.1.c.iv.

[1741] For example, an investment adviser that provides advice concerning whether and how to issue municipal securities; advice concerning the structure, timing, and terms of issuances of municipal securities and other similar matters; advice concerning municipal derivatives; or a solicitation would need to register as a municipal advisor. *See* Rule 15Ba1–1(d)(2)(ii); *supra* Section III.A.1.c.v.

[1742] The Commission does not have the information necessary to provide a reasonable estimate for many of the programmatic costs and benefits, in particular when discussing increases in the willingness of municipal entities and obligated persons to utilize municipal advisors and improvements in investor protection. In general, secondary data regarding the municipal advisory market that would assist the Commission in producing quantitative analyses are largely unavailable. Other than the academic papers cited in the Proposal and this release, few studies on municipal securities have attempted to undertake the efforts to collect such secondary data.

[1743] While commenters criticized this qualitative approach, none provided or suggested sources of data that would facilitate a quantitative analysis.

[1744] As indicated throughout this release, and as discussed further below, the Commission is mindful of the programmatic, registration, and recordkeeping costs and has adopted a definition of municipal advisor intended to help minimize compliance burdens consistent with the statutory objectives.

[1745] *See supra* note 1662.

[1746] With regard to terms that are not defined in Section 15B(e) of the Exchange Act, the Commission is defining those terms in a manner consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. *See* 15 U.S.C. 78o–4(e).

[1747] *See supra* note 1446 and accompanying text.

[1748] *See* Rule 15Ba1–1(d)(3)(vii).

[1749] *See supra* Section III.A.1.c.

differences from the baseline with regard to the programmatic costs and benefits related to the statutory requirements and MSRB rules that are currently operative should be minimal because they would have already been incurred under the temporary registration regime.[1750] Similarly, the definition of municipal advisor adopted today should not impact efficiency, competition, or capital formation relative to the baseline because those market participants required to register under the permanent registration regime should already be registered with the Commission and the MSRB under the temporary registration regime and complying with the requirements of Section 15B of the Exchange Act and MSRB rules.[1751]

As discussed above, a person that meets the statutory definition of municipal advisor, and for which a statutory exclusion is not available, is already required to register with the Commission on Form MA–T and is subject to a series of programmatic costs.[1752] These programmatic costs include, among other things, those incurred to comply with applicable provisions of Section 15B of the Exchange Act and MSRB rules. Municipal advisors will continue to be subject to a fiduciary duty to any municipal entity client and be prohibited from engaging in any fraudulent, deceptive, or manipulative acts or practices when providing 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 when undertaking a solicitation of a municipal entity or obligated person.[1753] Municipal advisors will also continue to be subject to MSRB Rule G–17, which requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. In addition, municipal advisors will still need to register with the MSRB and pay a $100 initial fee and a $500 annual fee.[1754] Because the Commission is adopting a definition of municipal advisor that is consistent with Section 15B(e) of the Exchange Act,[1755] the Commission believes registered municipal advisors would have already incurred these costs under the temporary registration regime. The Commission recognizes, however, that municipal advisors may incur costs to meet standards of training, experience, competence, and other qualifications, as well as continuing education requirements, that the MSRB may establish in the future.[1756]

The Commission believes the municipal advisor regulatory regime should continue to enhance municipal entity and obligated person protections and incentivize municipal advisors not to engage in misconduct.[1757] Municipal advisors will continue to be subject to Commission oversight, including periodic examinations, and may be subject to disciplinary action for misconduct.[1758] In addition, certain municipal advisors will now be subject to periodic examinations by FINRA to evaluate compliance with the Exchange Act, the rules and regulations thereunder, and MSRB rules.[1759]

Market participants will need to interpret a number of related terms to determine whether they are municipal advisors. Market participants will need to determine whether they provide ''advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products.'' [1760] The term ''municipal financial product'' is defined as ''municipal derivatives, guaranteed investment contracts, and investment strategies.'' [1761] As discussed below, although the Exchange Act defines the terms ''guaranteed investment contract'' and ''investment strategies,'' it does not define the term ''municipal derivatives.'' In addition, certain terms important to interpreting the term ''investment strategies'' are undefined (*i.e.,* proceeds of municipal securities and guaranteed investment contracts). As discussed below, the Commission is adopting definitions of these terms that are consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. The Commission has adopted several definitions of other related terms that are effectively identical to the statute (*i.e.,* municipal entity, obligated person, and solicitation).[1762]

The Commission is adopting a definition of guaranteed investment contract that applies only to contracts related to investments of proceeds of municipal securities or municipal escrow investments.[1763] The Commission believes that persons that provide advice concerning guaranteed investment contracts should have already registered with the Commission and the MSRB under the temporary registration regime.[1764] The Commission staff understands that most persons that provide advice about guaranteed investment contracts specialize in public finance issues and are unlikely to provide advice only about guaranteed investment contracts that do not relate to investments of proceeds of municipal securities or municipal escrow investments. In addition, a review of MA–T and MSRB data indicates that no municipal advisor registered with the Commission or the MSRB has indicated that it provides advice only about guaranteed investment contracts and not another service that would likely require registration with the Commission under the final rules and forms. Accordingly, the Commission does not believe that the definition of guaranteed investment contract adopted today will result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) in the number of municipal advisors that will register under the permanent registration regime. Similarly, the Commission does not believe there will be a significant change from the baseline with regard to the programmatic costs and benefits due to the definition of ''guaranteed investment contract.''

Although Section 15B of the Exchange Act does not define the term ''municipal derivatives,'' the Commission is adopting a definition that is consistent with the purposes of the Dodd-Frank

[1750] To the extent that the final rules provide guidance to certain market participants that their activities do not cause them to be municipal advisors, those persons would not incur the programmatic costs that flow from the regulatory regime.

[1751] *See supra* Section VIII.C.

[1752] As discussed below, the Commission is providing exemptions from the definition of municipal advisor for persons engaged in certain activities.

[1753] *See* 15 U.S.C. 78*o*–4(c)(1). *See also supra* note 1666 and accompanying text.

[1754] *See* MSRB Rule A–12; and MSRB Rule A–14.

[1755] With regard to terms that are not defined in Section 15B(e) of the Exchange Act, the Commission is defining those terms in a manner consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. *See* 15 U.S.C. 78o–4(e).

[1756] *See supra* note 1668. In addition, as discussed below, the final rules and forms will require every municipal advisor to register with the Commission and satisfy new recordkeeping requirements according to Rule 15Ba1–8.

[1757] *See infra* Section VIII.D.3.b.

[1758] *See supra* note 1680 and accompanying text.

[1759] *See* 15 U.S.C. 78*o*–4(b)(2)(E); 15 U.S.C. 78*o*–4(c)(7)(A)(iii). *See also supra* notes 1672–1673 and accompanying text.

[1760] *See* 15 U.S.C. 78*o*–4(e)(4).

[1761] *See* 15 U.S.C. 78*o*–4(e)(5).

[1762] Because the definitions of municipal entity, obligated person, and solicitation are consistent with the statute, the Commission believes that these definitions will not result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) in the number of registered municipal advisors or in the programmatic costs or benefits. *See supra* text accompanying notes 1750–1751.

[1763] *See* Rule 15Ba1–1(a).

[1764] As of December 31, 2012, approximately 320 municipal advisors registered on Form MA–T and approximately 185 municipal advisors registered with the MSRB indicated that they provide advice concerning guaranteed investment contracts.

Act to regulate persons that engage in municipal advisory activities. As discussed above, with respect to municipal entities, the Commission has determined not to qualify the definition of municipal derivatives as being limited to those entered into in connection with, or pledged as security or a source of payment for, existing or contemplated municipal securities.[1765] Accordingly, the Commission does not believe that this definition of municipal derivatives will result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) of the number of municipal advisors that will register under the permanent registration regime.[1766] The Commission is clarifying the application of the definition of municipal derivatives with respect to obligated persons to advice that relates to derivatives entered into in connection with, or pledged as security or a source of payment for, existing or contemplated municipal securities or another municipal derivative. The Commission expects that any persons that provide advice about derivatives outside this context would not register with the Commission under the permanent registration regime. The Commission does not believe, however, that this clarification will result in fewer persons registering as municipal advisors because the clarification is limited to instances that would cause a person to be an obligated person as defined in Section 15B(e)(10) of the Exchange Act.[1767]

The Commission recognizes that persons that are required to register as municipal advisors because they provide advice about municipal derivatives will incur the programmatic costs of the municipal advisor regulatory regime. However, the Commission believes that any differences from the baseline with regard to the programmatic costs and benefits due to the definition of ''municipal derivatives'' would be minimal since such advisors would have already incurred these costs under the temporary registration regime.[1768] The Commission believes that municipal entities and obligated persons that receive advice about municipal derivatives should receive the protections of the municipal advisor regulatory regime.[1769] As discussed above, the permanent registration regime will increase the amount of information available about municipal advisors.[1770] The Commission believes that the increased availability of information relative to the baseline about municipal advisors that provide advice about municipal derivatives, including disciplinary history and conflicts of interest, may lead to an improvement in the selection of municipal advisors that provide advice related to municipal derivatives because municipal entities and obligated persons will be able to consult registration information when choosing municipal advisors that specialize in municipal derivatives.[1771] In addition, as discussed above, the Commission believes that the increased public availability of information about municipal advisors who engage in municipal advisory activities pertaining to municipal derivatives may reduce from the baseline instances of misconduct to the extent the increased amount of information disclosed on Form MA as compared to Form MA–T acts as a deterrent against misconduct related to derivatives.[1772]

The Commission has determined not to adopt a separate definition of ''investment strategies,'' which is defined in Section 15B(e)(3) of the Exchange Act to include ''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.'' [1773] The Commission, however, is adopting definitions of proceeds of municipal securities and municipal escrow investments that are consistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. The Commission believes that persons that provide advice with regard to proceeds of municipal securities and municipal escrow investments should have already registered with the Commission and the MSRB under the temporary registration regime.[1774] In addition, the exemption in Rule 15Ba1–1(d)(3)(vii) for any person that provides advice to a municipal entity or obligated person with respect to municipal financial products to the extent that such person provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments will provide greater certainty regarding the types of persons who are required to register with the Commission. Accordingly, the Commission believes that the definitions of ''proceeds of municipal securities'' and ''municipal escrow investments'' will not result in a significant change from the baseline (*i.e.,* the number of municipal advisors registered with the MSRB) with regard to the number of municipal advisors that register under the permanent registration regime.

In addition, the Commission believes that any differences from the baseline with regard to the programmatic costs due to the adoption of the definitions of ''proceeds of municipal securities'' and ''municipal escrow investments'' should be minimal since such costs would have been incurred under the temporary registration regime. The Commission believes that municipal entities and obligated persons that receive advice concerning proceeds of municipal securities and municipal escrow investments should receive the protections of the municipal advisor regulatory regime, and that the Commission's approach tailors protection to those activities related to the investment of the proceeds of municipal securities and related escrow investments, which have been subject to widespread enforcement activity.[1775]

The Commission also believes the increased public availability of information relative to the baseline about municipal advisors who engage in municipal advisory activities pertaining to proceeds of municipal securities and municipal escrow investments may reduce instances of misconduct to the extent the increased amount of information disclosed on Form MA as compared to Form MA–T acts as a

[1765] *See supra* Section III.A.1.c.

[1766] The Commission believes that persons that provide advice about municipal derivatives to municipal entities should have already registered with the Commission and the MSRB under the temporary registration regime. As of December 31, 2012, more than 350 municipal advisors registered on Form MA–T and more than 230 municipal advisors registered with the MSRB indicated that they provide advice concerning the use of municipal derivatives. *See also infra* VIII.D.6 (discussing the exemption for swap dealers).

[1767] 15 U.S.C. 78*o*–4(e)(10).

[1768] *See supra* text accompanying note 1766.

[1769] *See supra* notes 1752–1756 and accompanying text.

[1770] *See infra* Section VIII.D.1.a.

[1771] *See infra* Section VIII.D.3.b.

[1772] The Commission recognizes, however, that municipal entities and obligated persons will not have registration information for advisors to obligated persons that invest in derivative transactions not connected with municipal securities or other municipal derivatives.

[1773] *See* 15 U.S.C. 78*o*–4(e)(3).

[1774] As of December 31, 2012, nearly 500 municipal advisors registered on Form MA–T indicated that they provide advice concerning the investment of the proceeds of municipal securities and 360 indicated that they provide advice regarding the recommendation and/or brokerage of municipal escrow investments. MSRB data does not separately identify municipal advisors that provide these activities.

[1775] *See supra* note 287.

deterrent against misconduct related to investment strategies.

Persons may incur costs to rely on the provisions regarding reasonable reliance on representations related to proceeds of municipal securities [1776] and municipal escrow investments.[1777] The Commission estimates that the PRA costs [1778] for persons to rely on Rule 15Ba1–1(m)(3) for reasonable reliance on representations related to proceeds of municipal securities will be $733,885.[1779] In addition, the Commission estimates that the PRA costs for persons to rely on Rule 15Ba1–1(h)(2) for reasonable reliance on representations related to municipal escrow investments will be $401,065.[1780] The Commission notes that no entity is required to utilize Rule 15Ba1–1(m)(3) or Rule 15Ba1–1(h)(2) and that any efforts to do so are voluntary.

b. Alternatives

One alternative to the rules the Commission is adopting today relates to the types of monies covered under the final rules. The Commission considered whether the final rules should only apply to the proceeds of municipal securities or whether they should also apply to funds held by, or on behalf of, a municipal entity that do not constitute the proceeds of municipal securities. As discussed above, because the definition of ''investment strategies'' in Section 15B(e)(3) of the Exchange Act [1781] provides that it ''includes'' plans or programs for the investment of the proceeds of municipal securities, the Commission proposed to interpret the term to mean that it includes, without limitation, the investment of proceeds of municipal securities, as well as plans, programs, or pools of assets that invest funds held by, or on behalf of, a municipal entity. Commenters generally opposed the proposed interpretation of investment strategies.[1782]

As noted above, the Commission continues to believe that the term ''includes'' is not limiting, but is persuaded by commenters. Accordingly, the Commission has determined to adopt a definition of ''investment strategies'' that focuses more narrowly on the statutorily identified categories of ''proceeds of municipal securities'' and ''municipal escrow investments.'' [1783] The Commission believes this approach related to investment strategies focuses the protections of the municipal advisor regulatory regime on those activities related to the investment of the proceeds of municipal securities and related escrow investments, which have been subject to widespread enforcement activity.[1784] The Commission believes that a broader approach would likely result in a greater number of persons registering as municipal advisors, which may not be necessary or appropriate in the protection of investors at this time.[1785] In addition, because persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments will not have to register as municipal advisors, the Commission recognizes that such persons will not be subject to the programmatic, registration, and recordkeeping costs of the permanent registration regime.

Another alternative to the rules the Commission is adopting today is for the Commission not to define further ''municipal advisor'' and related terms. The Commission did not estimate the assessment costs market participants would incur to determine whether registration is required under the temporary registration regime and initially believed that the direct costs for respondents to read and apply the definitions in proposed Rule 15Ba1–1(d) would be minimal.[1786] As discussed above, however, in light of comments received,[1787] the Commission now believes that persons may incur costs of up to $25,500 to determine whether their activities require them to register as municipal advisors under the final rules. Nonetheless, the Commission believes that the assessment costs associated with determining whether a person would be required to register as a municipal advisor would be greater in the absence of the rules the Commission is adopting today.[1788] Without these rules, market participants would still need to analyze whether their activities fall within the definition of municipal advisor in Section 15B(e)(4) of the Exchange Act and would likely need to request no-action relief and other guidance from the Commission or Commission staff, or risk failing to register with the Commission as required.[1789] As discussed above, the Commission estimates that the costs associated with determining whether a market participant is a municipal advisor under Section 15B of the Exchange Act may range from $379 to $25,500, with the high end of the range reflecting the cost for entities with more complex business activities.[1790] Thus, the Commission believes the rules adopted today provide extensive guidance to market participants and should reduce the number of requests for no-action relief and other guidance from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.

3. Rules and Forms Related to Registration of Municipal Advisors

The final rules and forms will create a permanent registration regime for municipal advisors consisting of the

[1776] *See* Rule 15Ba1–1(m).

[1777] *See* Rule 15Ba1–1(h)(2).

[1778] *See* text accompanying *infra* note 1797.

[1779] (880 hours (estimated burden to draft a template to use in obtaining the written representation) × $379 (hourly rate for an in-house attorney)) + (6,355 hours (estimated burden to obtain the written representation) × $63 (hourly rate for a Compliance Clerk)) = $733,885. *See supra* notes 1622–1624 and accompanying text. Staff estimates that the average national hourly rate for an in-house attorney is $379 based on data from SIFMA's *Management & Professional Earnings in the Securities Industry 2012* (modified by Commission staff to account for an 1800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). The $63-per-hour figure for a Compliance Clerk is from SIFMA's *Office Salaries in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

[1780] (700 hours (estimated burden to draft a template to use in obtaining the written representation) × $379 (hourly rate for an attorney)) + (2,155 hours (estimated burden to obtain the written representation) × $63 (hourly rate for a Compliance Clerk)) = $401,065. *See supra* notes 1616–1618 and accompanying text. *See supra* note 1779 (calculating the hourly rate for an in-house attorney and a Compliance Clerk).

[1781] 15 U.S.C. 78*o*–4(e)(3).

[1782] *See supra* notes 300–324 and accompanying text.

[1783] *See* Rule 15Ba1–1(b). The Commission is also persuaded by commenters that, at this time, it is appropriate to apply the definition of guaranteed investment contract more narrowly. This approach is consistent with the Commission's decision to limit the application of ''investment strategies'' to plans or programs for the investment of proceeds of municipal securities. The Commission expects that most providers of guaranteed investment contracts will not be considered municipal advisors as long as they do not engage in municipal advisory activities.

[1784] *See supra* note 287.

[1785] The Commission is unable to estimate the number of persons who would otherwise need to register as municipal advisors under this alternative approach because it does not have the data necessary to conduct this analysis and the information is not otherwise publicly available.

[1786] *See* Proposal, 76 FR 873.

[1787] *See supra* note 1730.

[1788] For example, one commenter on the Proposal stated that it lacked a clear line between permissible and impermissible conduct that will drive up municipal advisory costs due to cautious efforts to ''over-comply'' and not risk an inadvertent violation. *See* American Council of Life Insurers Letter.

[1789] In addition, without this guidance, a greater number of market participants would likely decide to register as municipal advisors unnecessarily and thereby incur the programmatic, registration, and recordkeeping costs of the municipal advisor registration regime.

[1790] *See supra* note 1733 and accompanying text.

following forms: Form MA, Form MA–I, Form MA–NR, and Form MA–W.[1791] Under Rule 15Ba1–2(a), each person applying for registration with the Commission as a municipal advisor is required to complete Form MA and file the form electronically with the Commission. In addition, each person applying for registration or registered with the Commission as a municipal advisor must complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf and file the form electronically with the Commission.[1792] Each Form MA shall be considered filed with the Commission upon submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–Is, to the Commission's EDGAR system.[1793] A sole proprietor will have to complete both Form MA and Form MA–I.[1794]

Pursuant to Rule 15Ba1–5(a), a municipal advisory firm that registers on Form MA must amend its Form MA at least annually, within 90 days of the end of the municipal advisor's fiscal year in the case of firms or within 90 days of the end of the calendar year for sole proprietors, and more frequently as required by the General Instructions. In addition, a registered municipal advisor must promptly amend Form MA–I whenever any information previously provided in Form MA–I becomes inaccurate for any reason.[1795] With respect to Form MA–I, all municipal advisory firms will be required to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf. Registered municipal advisors will also report successions of registration on Form MA.[1796]

Pursuant to Rule 15Ba1–4, all registered municipal advisors are required to file Form MA–W to withdraw from registration with the Commission as a municipal advisor. As will be the case with both Form MA and Form MA–I, a municipal advisor must file Form MA–W electronically with the Commission.

In adopting these rules, the Commission sought to design a registration process that is similar to other registration processes administered by the Commission. The rules are based on rules applicable to broker-dealers and investment advisers; similarly, Form MA is based on Form ADV and Form BD, and Form MA–I is based on Form U4. To the extent market participants are familiar with these existing registration processes, the Commission believes that using similar processes to register municipal advisors will create efficiencies for market participants.

The Commission also has sought to ensure that the Commission staff has information sufficient to make a determination as to whether registration should be granted or denied. Thus, Form MA differs from Form ADV and Form BD because it requests information specific to the municipal advisory business. The Commission also has sought to assure that the rules, forms, and process generally are as clear as possible so as to minimize confusion. In addition, the Commission has sought to minimize, to the extent possible, duplication and costs that the rules may impose on firms. Finally, burdens and costs that have been estimated for PRA purposes are included in the broader costs and benefits discussion that follows because the Commission believes, as the registration process would largely be forms-based, it is appropriate to include them.[1797]

a. Registration Costs

The Commission acknowledges that the establishment of a permanent registration regime will impose costs on persons registering as municipal advisors on Form MA. As discussed above, persons meeting the statutory definition of municipal advisor and for whom a statutory exclusion is not available should currently be registered with the Commission on Form MA–T as well as with the MSRB. Thus, such persons would have incurred costs in connection with such registration.[1798] Because of this, the quantitative costs discussed below related to registration on Form MA represent additional costs separate from those incurred to register on Form MA–T. However, for the reasons discussed below, the Commission believes that municipal advisors that have already gathered relevant information to complete Form MA–T or to register with the Commission in another capacity may incur lower permanent registration costs than those that have not registered on Form MA–T (*i.e.,* new entrants to the market) or that have not registered with the Commission in another capacity.

The Commission expects municipal advisors will incur one-time costs to familiarize themselves with the rules and the relevant forms. The paperwork burden of gathering information for the purpose of completing the forms will be reduced to the extent municipal advisors have already gathered some of the information required by the forms in order to register with the Commission on Form MA–T or in another capacity.[1799] In comparison, municipal advisors not otherwise registered with the Commission and solicitors that are not brokers, dealers, or investment advisers, to the extent they need to gather the required information for the first time, may incur higher one-time costs to familiarize themselves with the rules and relevant forms.[1800] In addition, some municipal advisors may incur one-time costs to establish new internal controls, such as procedures for obtaining the information required by the forms, as applicable. These potential one-time burdens are included in the Commission's estimate below.[1801] The Commission believes that these costs will be limited for municipal advisors that are registered with the Commission as investment advisers and/or broker-dealers or that have voluntarily adopted such practices, but will likely be higher for municipal advisors not otherwise registered with the Commission and solicitors to the extent they have not voluntarily adopted such practices.[1802]

The Commission received one comment letter that questioned the need for the proposed self-certification

[1791] The Commission is establishing additional requirements for non-resident municipal advisors. *See supra* Section III.A.6.

[1792] *See* Rule 15Ba1–2(b)(1). As discussed above, natural person municipal advisors who are not sole proprietors no longer need to register with the Commission. However, the Commission is retaining Form MA–I to obtain information about individuals associated with municipal advisory firms engaged in municipal advisory activities on behalf of such firms, which will assist in the Commission's oversight functions. *See supra* Section VIII.D.1.a (discussing the benefits of the permanent registration regime to Commission oversight of municipal advisors). The Commission notes, moreover, that it is the municipal advisory firms, not the individuals, that will be required to file Form MA–I with the Commission.

[1793] *See* Rule 15Ba1–2(c).

[1794] *See* Rule 15Ba1–2(b)(2). The Commission has developed an online filing system to permit municipal advisors to file a completed Form MA and Form MA–I through the EDGAR system. The information filed will be publicly available once registration has been granted.

[1795] *See* Rule 15Ba1–5(b).

[1796] *See* Rule 15Ba1–7.

[1797] *See supra* Section VII.

[1798] *See supra* Section VIII.C.2.

[1799] *See supra* Section VII.D.1.

[1800] *See supra* Section VII.D.1.

[1801] *See supra* Section VII.D.1.

[1802] Some unregulated entities 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, *http://www.naipfa.com/.*

requirement.[1803] As discussed above, after careful consideration of comments received, the Commission is not requiring self-certification in Form MA.[1804]

In the Proposal, the Commission estimated that the total initial cost for all municipal advisory firms and all natural person municipal advisors to register with the Commission would be approximately $12,623,000.[1805] Although the Commission received comments suggesting that the Proposal underestimated the hourly burden,[1806] the Commission is not changing its estimate of the time required to register with the Commission (other than to reflect its decision not to adopt a self-certification requirement).[1807] The Commission notes that commenters did not provide specific figures by which to recalculate the Commission's estimate.[1808] As discussed above,[1809] the Commission is making some revisions to clarify the questions asked in Form MA and Form MA–I and to elicit additional information. Because some revisions will increase the hourly burden for municipal advisors to complete the relevant forms, while others will decrease the burden, and because most of the changes to Form MA and Form MA–I are clarifications not requiring additional information, the Commission does not believe the additional information requirements will impose significant additional burdens on municipal advisors and is retaining its original hourly burden estimates as proposed. As discussed above, the Commission estimates that the total average initial burden to complete a single Form MA will be 3.5 hours per applicant,[1810] while the average amount of time for a municipal advisory firm to complete Form MA–I with respect to a natural person municipal advisor will be 3.0 hours.[1811] The Commission now estimates that the total initial PRA cost for all municipal advisory firms to register with the Commission will be approximately $6,910,975,[1812] for an average cost per firm of $7,595.[1813] The Commission believes that the reduction in cost from the Proposal is primarily attributable to a reduction in the estimated number of municipal advisory firms that will initially register with the Commission; a reduction in the estimated number of natural person municipal advisors for which municipal advisory firms and sole proprietors will need to complete Form MA–I; [1814] and the Commission's decision not to adopt a self-certification requirement. The Commission notes that this estimate represents the aggregate cost to the industry. The costs incurred by a specific municipal advisor to register with the Commission will depend on its size and the complexity of its business activity.

The Commission also anticipates that municipal advisors will incur ongoing annual costs to monitor and/or maintain the information required by the registration forms; [1815] to provide updates to the registration forms; and to withdraw from registration with the Commission. In addition, municipal advisors that are new to the market will incur costs to register with the Commission. In the Proposal, the Commission estimated that these ongoing annual costs would be approximately $5,292,100.[1816]

Under the final rules and forms, municipal advisory firms will incur a number of ongoing costs. Municipal

[1803] *See, e.g.,* Costanzo Letter.

[1804] *See supra* Section III.A.2.b.

[1805] $1,105,000 (estimated initial cost for all municipal advisory firms to complete Form MA) + $11,118,000 (estimated initial cost for all natural person municipal advisors to complete Form MA–I) + $400,000 (estimated cost for all municipal advisory firms to hire outside counsel) = $12,623,000. *See* Proposal, 76 FR 871, 875.

[1806] *See* Financial Services Roundtable Letter (asserting that ''initial preparation of Form MA would require significantly greater hours and much higher costs''). *See also supra* Section VII.D.1 (discussing comments regarding the hourly burden estimate from the Proposal).

[1807] *See supra* notes 1486–1487 and accompanying text.

[1808] The Commission received several comment letters that specifically addressed the costs of registration on Form MA and Form MA–I. These commenters generally criticized the cost of municipal advisor registration with both the Commission and the MSRB, including the MSRB's $100 initial fee and $500 annual fee. *See, e.g.,* Texas Bankers Association Letter; State of Texas Letter; John Sullivan Letter. The Commission notes that it does not charge municipal advisors a fee to register with the Commission. For purposes of the economic analysis, the fees imposed by the MSRB are part of the economic baseline. Although the Dodd-Frank Act permits the MSRB to require municipal advisors to pay such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB (*see* 15 U.S.C. 78*o*–4(b)(2)(J)), the Commission does not set or approve fees charged by the MSRB. Instead, the Exchange Act provides that certain designated SRO rules, including fees charged by the MSRB, take effect upon filing with the Commission and may thereafter be enforced by the SRO to the extent not inconsistent with the Exchange Act, the rules and regulations thereunder, and applicable Federal and State law. *See* 15 U.S.C. 78s(b)(3)(A), (C). The Commission has sixty days from the date of filing, however, during which it ''summarily may temporarily suspend'' the fees ''if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act. *See* 15 U.S.C. 78s(b)(3)(C). If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. *See id.* In addition, Section 19(c) of the Exchange Act authorizes the Commission, by rule, to abrogate, add to, and delete from the rules of an SRO (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the SRO, to conform its rules to requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78s(c).

[1809] *See supra* Section VII.D.1.a–b.

[1810] *See supra* Section VII.D.1.a.

[1811] *See supra* Section VII.D.1.b.

[1812] (36,935 hours (total estimated hourly burden under the rules for all municipal advisors to complete Form MA and required number of Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + $364,000 (estimated cost for all municipal advisors to hire outside counsel to assist in completing Form MA) + ((910 hours (estimated one-time burden for all municipal advisory firms to draft a template to use in obtaining the written consents to service of process) × $379 (hourly rate for an attorney)) + (1,125 hours (estimated one-time burden for all municipal advisory firms to obtain the written consents to service of process) × $63 (hourly rate for a Compliance Clerk))) = $6,910,975. *See supra* note 1501 and accompanying text (calculating the total estimated hourly burden under the rules for all municipal advisors to complete Form MA and required number of Form MA–I); *supra* note 1567 and accompanying text (estimating the total cost for all municipal advisory firms to hire outside counsel to review their compliance with the final rules and forms); *supra* notes 1579–1581 and accompanying text (estimating the one-time burden to obtain written consents to service of process); *supra* note 1779 (calculating the hourly rate for an in-house attorney and the hourly rate for a Compliance Clerk). The Commission expects that completion of Form MA and Form MA–I will most likely be performed equally by compliance managers and compliance clerks. Dividing the hourly rate evenly between a compliance manager ($269 per hour) and a compliance clerk ($63 per hour) results in a cost per hour of $166. ($269 × 0.5) + ($63 × 0.5) = $166. The $269-per-hour figure for a Compliance Manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* 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. In the Proposal, the combined hourly rate was $170. *See* Proposal, 76 FR 875 n.398. The combined hourly rate for a Compliance Manager and Compliance Clerk is lower than in the Proposal because of a reduction in the rate for a Compliance Manager from $273 per hour to $269 per hour and a reduction in the rate for a Compliance Clerk from $67 per hour to $63 per hour.

[1813] $6,910,975 (estimated total initial labor cost for all municipal advisory firms to register with the Commission) ÷ 910 (estimated number of municipal advisors registered on Form MA) = $7,594.48.

[1814] *See supra* notes 1447–1464 and accompanying text.

[1815] These costs are included in the Commission's estimate below.

[1816] $510,000 (estimated ongoing cost for all municipal advisory firms to amend Form MA and complete the annual self-certification) + $3,519,000 (estimated ongoing cost for all natural person municipal advisors to amend Form MA–I and complete the annual self-certification) + $110,500 (estimated ongoing cost for all new municipal advisory firms to complete Form MA) + $918,000 (estimated ongoing cost for all new natural person municipal advisors to complete Form MA–I) + $5,100 (estimated ongoing annual labor cost for all municipal advisory firms to complete Form MA–W) + $229,500 (estimated ongoing cost for all natural person municipal advisors to withdraw from Form MA–I registration) = $5,292,100. *See* Proposal, 76 FR 875–76.

advisory firms that are new to the market will incur costs to register with the Commission. In addition, municipal advisory firms will incur costs to amend Form MA, amend Form MA–I, and withdraw from registration with the Commission. The Commission now estimates that municipal advisors will incur total ongoing annual PRA costs of approximately $2,618,373.[1817] The Commission notes that this estimate represents the aggregate cost to the industry. The ongoing costs incurred by a specific municipal advisor will depend on its size and the complexity of its business activity. The reduction in cost from the Proposal is primarily attributable to a reduction in the estimated number of municipal advisory firms that will register with the Commission; [1818] a reduction in the estimated number of natural person municipal advisors for which municipal advisory firms and sole proprietors will need to amend Form MA–I; [1819] a reduction in the estimated number of municipal advisory firms that will withdraw from registration; and the Commission's decision not to adopt a self-certification requirement.[1820]

b. Registration Benefits

The Commission believes that the requirements that municipal advisors register with the Commission on Form MA, submit a Form MA–I for each of its natural person municipal advisors, and update the information provided at least annually (or more often as required by the rules) will provide a number of benefits. In addition to the benefits discussed above,[1821] the final rules and forms could improve the process through which municipal entities and obligated persons select municipal advisors (referred to as the ''municipal advisor selection process''), as the disclosures required under the permanent registration regime should allow municipal entities and obligated persons to become better informed about municipal advisors at a lower cost, which could increase the use of municipal advisors. Further, the final rules and forms could incentivize municipal advisors not to engage in misconduct. In addition, Form MA, Form MA–I, and Form MA–NR should enhance the ability of securities regulators to oversee municipal advisors, which could increase the willingness of municipal entities and obligated persons to utilize municipal advisors.[1822]

The Commission believes that a significant benefit of the final rules and forms is that they could enhance the municipal advisor selection process by increasing the amount of publicly available information about municipal advisors. The rules and forms will allow municipal entities and obligated persons to become better informed about municipal advisors more efficiently, and thereby, at a lower cost.[1823] Municipal advisors will be required to submit, and municipal entities, obligated persons, the general public, and others will be able to access, information through the Commission's EDGAR system. In addition, because municipal advisors that are registered with the Commission as broker-dealers and/or investment advisers will be required to provide their CRD Number and IARD Number, respectively, on Form MA, interested parties will be able to access other publicly available information about the municipal advisor.[1824] As discussed in the Proposal,[1825] research has shown that most municipal entities do not utilize a formalized selection process when selecting municipal advisors.[1826] Because there is little publicly available information about many municipal advisors, municipal entities and obligated persons that do not use a formalized selection process might not have sufficient information when deciding among municipal advisors.[1827] As a result of the public availability of information disclosed in Form MA and Form MA–I, municipal entities and obligated persons may be able to more easily establish objective criteria to use in selecting municipal advisors. In addition, the availability of information required by Form MA and Form MA–I in a uniform, standardized format will likely reduce from the baseline the costs of collecting information and comparing it across municipal advisors. The ease of establishing and verifying compliance

[1817] ((3,200 hours (total estimated hourly burden under the rules for new municipal advisors to complete an initial Form MA and required number of Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + $40,000 (estimated costs for new municipal advisors to hire outside counsel to assist in completing Form MA)) + (12,053 hours (total estimated hourly burden under the rules for all municipal advisors to complete amendments to Form MA and Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + (15 hours (total estimated hourly burden under the rules for all municipal advisors to withdraw from Form MA registration) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + ((100 hours (estimated ongoing burden for new municipal advisory firms to draft a template to use in obtaining the written consents to service of process) × $379 (hourly rate for an attorney)) + (95 hours (estimated ongoing burden for municipal advisory firms to obtain the written consents to service of process) × $63 (hourly rate for a Compliance Clerk))) = $2,618,373. *See supra* note 1506 and accompanying text (calculating the total estimated hourly burden under the rules for new municipal advisors to complete an initial Form MA and required number of Form MA–I); *supra* note 1525 and accompanying text (calculating the total estimated hourly burden under the rules for all municipal advisors to complete amendments to Form MA and Form MA–I); *supra* note 1532 and accompanying text (calculating the total estimated hourly burden under the rules for all municipal advisors to withdraw from Form MA registration); *supra* notes 1584–1586 and accompanying text (estimating the ongoing burden to obtain written consents to service of process); *supra* note 1779 (calculating the hourly rate for an in-house attorney and the hourly rate for a Compliance Clerk); *supra* note 1812 (calculating the combined hourly rate).

[1818] *See supra* notes 1442–1446 and accompanying text.

[1819] *See supra* notes 1447–1464 and accompanying text. As discussed above, the Commission is not revising the estimated time to amend Form MA and Form MA–I. *See supra* Section VII.D.3.

[1820] *See supra* Section VII.D.4. Several commenters stated that the Commission did not address the potential liability costs associated with a permanent registration regime. *See* SIFMA Letter I (expressing concerns regarding the self-certification requirement); NAESCO Letter (expressing concerns regarding fiduciary liability). The Commission recognizes that some municipal advisors may incur litigation costs as a result of the final rules and forms, and that to the extent that there are such costs, some of them may be passed on to municipal entities and obligated persons in the form of increased fees. However, commenters did not provide estimates of potential liability costs, and the Commission does not have the information necessary to provide a reasonable estimate of the litigation costs a municipal advisory firm may face because the costs will depend on the facts and circumstances of each matter litigated. In addition, the Commission notes that any litigation costs incurred separate from the registration and recordkeeping requirements are included in the economic baseline as a function of the statutory municipal advisor regulatory regime. Further, the Commission believes the potential liability costs are outweighed by the benefits recognized by Congress in establishing the statutory municipal advisor regulatory regime.

[1821] *See supra* Section VIII.D.1.a.

[1822] *See supra* Section VIII.D.1.a.

[1823] The Commission is unable to estimate the amount of time and money municipal entities may save by reviewing Form MA and Form MA–I rather than engaging in an RFP process or searching for other regulatory documents. The Commission believes that the ability to access information, including disciplinary history and conflicts of interest, on municipal advisors in a single location benefits municipal entities by reducing the need to search for other regulatory documents of those municipal advisors that are registered, or have associated persons that are registered, in another capacity.

[1824] Although EDGAR will not automatically provide an electronic link to the information on the CRD and IARD systems, these systems are nevertheless readily accessible, and with the identifying numbers of the relevant filings provided, interested parties should be able to find the desired information easily.

[1825] *See* Proposal, 76 FR 874.

[1826] 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 and Dudney, *supra* note 38.

[1827] *See supra* Section VIII.D.1.a.

with such criteria may increase the likelihood that municipal advisors are hired because of their qualifications rather than for other reasons such as political or personal connections to decision-making officials. Further, to the extent that municipal entities and obligated persons have been deterred from engaging a municipal advisor because they were not familiar with the pool of municipal advisors, the permanent registration regime may increase the use of municipal advisors from the baseline.[1828] The reduced information search costs for municipal entities may have an incremental effect of increasing informational efficiency. In addition, an improved municipal advisor selection process may lead to fewer municipal defaults and an increased likelihood that municipal entities issue debt, which could improve efficiency and capital formation.[1829]

With respect to the issuance of municipal securities, the increased likelihood of using a municipal advisor could lead to reduced issuance costs and better financing terms for municipal entity clients, which could improve capital formation and indirectly have a positive impact on taxpayers. As discussed in the Proposal, one empirical study suggests that the use of municipal advisors is associated with better borrowing terms, lower reoffering yields, and narrower underwriter gross spreads,[1830] particularly in instances where the advisors are of a higher quality.[1831] Municipal advisors can play an important role in the issuance process by successfully negotiating to lower these costs. As these studies did not include advisory fees in calculating the cost savings, it is possible that some of these savings may be offset by the fees municipal entities and obligated persons pay to municipal advisors.[1832] Therefore, the Commission believes that the final rules and forms could incentivize municipal entities and obligated persons to use municipal advisors, which could encourage municipal entities to issue debt (as opposed to pursuing other financial options), thereby increasing capital formation.

c. Non-Resident Municipal Advisors

Rule 15Ba1–6 sets forth the general procedures for serving non-residents on Form MA–NR. Pursuant to Rule 15Ba1–6 and the instructions to Form MA–NR, each non-resident municipal advisor applying for registration, at the time of filing of the municipal advisor's application on Form MA, must file with the Commission a written irrevocable consent and power of attorney on Form MA–NR to appoint an agent in the United States upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident person. In addition, each municipal advisor applying for registration shall, at the time of filing the relevant Form MA–I, file with the Commission a written irrevocable consent and power of attorney on Form MA–NR for each non-resident general partner, non-resident managing agent, and non-resident natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf.[1833] Rule 15Ba1–6(d) will require each non-resident municipal advisor 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 and submit to inspection and examination by the Commission.

Pursuant to Rule 15Ba1–6(b), any change to the name or address of each agent for service of process must be communicated promptly to the Commission by filing a new Form MA–NR. Rule 15Ba1–6(c) requires each non-resident municipal advisor, general partner and managing agent of a registered municipal advisor, and each natural person associated with a registered municipal advisor that engages in municipal advisory activities on its behalf to promptly appoint a successor agent for service of process and file a new Form MA–NR if the non-resident municipal advisor, general partner, managing agent, or associated person 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, managing agent, or associated person. Rule 15Ba1–6(d) requires 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 its books and records and can, as a matter of law, submit to inspection and examination by the Commission.

Non-resident municipal advisors will incur costs to complete Form MA–NR and obtain an opinion of counsel.[1834] Non-resident municipal advisory firms may incur one-time costs to establish new internal controls, such as procedures for obtaining the information required by Form MA–NR. These one-time costs are included in the estimates below. In the Proposal, the Commission estimated that the initial cost for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR and for non-resident municipal advisory firms to obtain an opinion of counsel that the municipal advisory firm can provide prompt access to its books and records and can be subject to onsite inspection and examination would be approximately $8,300.[1835] The Commission did not receive any comments on this estimate. The Commission now estimates the initial PRA cost to complete Form MA–NR and obtain opinions of counsel will be approximately $12,042.[1836] The

[1828] Moreover, public disclosure of the registration information of municipal advisors and their associated persons will make this information available not only to municipal entities and regulators, but also to the general public. Even if a municipal entity or obligated person does not otherwise seek to obtain this information as part of its selection process, the information will be available to interested persons (*e.g.,* the press and concerned citizens) that might directly or indirectly influence the selection of the municipal advisor.

[1829] *See infra* notes 1830–1832 and accompanying text. The final rules and forms could also increase investor willingness to invest in municipal bond offerings to the extent that the municipal entity issuing bonds used a municipal advisor and investors understand and consider the benefits of municipal advisor registration, including disclosure of conflicts of interest and disciplinary history.

[1830] *See generally* Vijayakumar and Daniels, *supra* note 34. *See also* Proposal, 76 FR 874.

[1831] *See generally* Allen and Dudney, *supra* note 38 (''For the $16.8 million mean issue size in our sample, the present value benefits of choosing a high-quality advisor for negotiated issues are estimated to be $63,193 to $116,511 for 20-year term issues ($40,136 to $74,001 for ten-year term issues), depending on the measure of advisor quality used, and $84,915 to $171,805 for revenue issues ($53,933 to $109,121 for ten-year term issues).''). *See also* Proposal, 76 FR 874.

[1832] *But see* Allen and Dudney, *supra* note 38 (''[C]onversations with financial advisors lead us to believe that fee differences between low and high advisors would not be large enough to offset the interest savings from using a quality advisor.'').

[1833] *See* Rule 15Ba1–6(a)(2).

[1834] *See supra* Section VII.D.5 (estimating the number of persons required to complete Form MA–NR).

[1835] $5,100 (estimated cost for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR) + $3,200 (estimated cost for non-resident municipal advisory firms to obtain an opinion of counsel) = $8,300. *See* Proposal, 76 FR 877.

[1836] (48 hours (estimated initial hourly burden under the rules for all respondents to complete a Form MA–NR) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + ((6 hours (estimated initial hourly burden under the rules for all respondents to obtain opinion of counsel) × $379 (hourly rate for an in-house attorney)) + (2 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel for providing an opinion of counsel))) = $12,042. *See supra* notes 1544–1548 and accompanying text

Continued

anticipated costs are higher than those estimated in the Proposal because Commission staff is including certain associated persons in this estimate.[1837]

In addition, as discussed below, the Commission anticipates there will be ongoing costs related to filing Form MA–NR.[1838] In the Proposal, the Commission estimated that the ongoing annual costs for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR and for non-resident municipal advisory firms to obtain an opinion of counsel that the municipal advisory firm can provide prompt access to its books and records and can be subject to onsite inspection and examination would be approximately $1,440.[1839] The Commission did not receive any comments on this estimate. The Commission now estimates that the ongoing annual PRA cost for non-resident municipal advisory firms to update Form MA–NR and/or file a new Form MA–NR and for non-resident municipal advisory firms to obtain new opinions of counsel, as described above, will be approximately $2,369.[1840] The anticipated costs are higher than those estimated in the Proposal due to an increase in the hourly rate of an in-house attorney and inclusion of the cost non-resident municipal advisory firms will incur to hire outside counsel to provide an opinion of counsel.

d. Alternatives

One alternative to the rules and forms adopted today would be for the Commission to make the temporary registration regime permanent. In this alternative, municipal advisors currently registered under the temporary registration regime would not incur the new costs to register with the Commission.[1841] Similarly, new entrants to the municipal advisor market would incur the comparatively lower costs to register under the temporary registration regime.[1842] In establishing the temporary registration regime, however, the Commission intended to adopt a permanent registration regime that would, among other things, require municipal advisors to provide more information on Form MA than that required by Form MA–T, including information regarding conflicts of interest and increased information regarding disciplinary history. By requiring this additional information and requiring submission through the Commission's EDGAR system, Commission staff will be able to retrieve and analyze the data it needs more efficiently, which should enhance the Commission's ability to carry out its mission with respect to municipal advisory activities effectively. In addition, as discussed above, the permanent registration regime could improve the municipal advisor selection process and incentivize municipal advisors not to engage in misconduct.[1843]

Similarly, the Commission believes that to make the temporary registration regime permanent rather than to establish the permanent registration regime adopted today may not enhance competition in the market. As discussed above, the Commission believes that requiring municipal advisors to disclose the information required by the final rules and forms will lead to a number of benefits beyond the temporary registration regime. For example, municipal entities, obligated persons, the general public, and others will be able to access information about municipal advisors electronically through the Commission's EDGAR system and easily cross-reference information submitted through IARD and CRD. Enhancing the ability of municipal entities and obligated persons to compare and consider municipal advisors in the municipal advisor selection process could result in increased quality-based competition relative to the baseline, which could, in turn, lead to reduced issuance costs and better financing terms.[1844]

The Commission also considered whether to provide an alternative registration program for persons that are already registered with the Commission in another capacity. Some commenters indicated that Form MA is largely duplicative of other registration forms (*e.g.,* Form BD, Form ADV) required for other persons (*e.g.,* broker-dealers, investment advisers).[1845] One commenter suggested persons already registered with the Commission could check an additional box on their primary registration forms, or the Commission could provide a short-form registration process.[1846]

As discussed above, the Commission has determined not to create a separate registration program for entities that are already registered with the Commission in another capacity. The Commission does not believe that such an approach would achieve the goal of creating a registration system specific to municipal advisors. Form MA, while modeled primarily on Form ADV and Form BD, is designed to capture information regarding the activities of municipal advisors and the markets that they serve that would not otherwise be captured in other forms. This information will permit the Commission 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. In addition, having information about municipal advisors in a single location could improve the municipal advisor selection process.[1847]

Further, the Commission believes that, based on the expertise and experience of its enforcement and examinations staff, for purposes of regulation, it is appropriate to collect information regarding the financial industry and other activities of associated persons involved in the municipal securities market, including swap dealers, major swap participants,

(estimating the initial hourly burden under the rules for all respondents to complete a Form MA–NR and the initial hourly burden under the rules for all respondents to obtain opinion of counsel); *supra* note 1779 (discussing the hourly rate for an in-house attorney); *supra* note 1812 (calculating the combined hourly rate).

[1837] *See supra* Section III.A.6.a. The estimated costs are also higher due to an increase in the hourly rate of an in-house attorney and inclusion of the cost non-resident municipal advisory firms will incur to hire outside counsel to provide an opinion of counsel.

[1838] Non-resident municipal advisors will incur recurring costs to monitor and maintain the information required by Form MA–NR. These costs are included in the estimates below.

[1839] $340 (estimated ongoing annual cost for non-resident municipal advisory firms, non-resident general partners, and non-resident managing agents to complete Form MA–NR) + $1,100 (estimated ongoing annual cost for non-resident municipal advisory firms to obtain an opinion of counsel) = $1,440. *See* Proposal, 76 FR 877.

[1840] (2 hours (estimated ongoing annual hourly burden under the rules for respondents to complete a Form MA–NR) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk)) + ((3 hours (estimated ongoing annual hourly burden under the rules for all respondents to obtain opinion of counsel) × $379 (hourly rate for an in-house attorney)) + (1 (non-resident municipal advisory firms expected to provide opinion of counsel) × $900 (average estimated cost to hire outside counsel for providing an opinion of counsel))) = $2,369. *See supra* note 1556–1558 (estimating the ongoing annual hourly burden under the rules for respondents to complete a Form MA–NR and estimating the ongoing burden to provide an opinion of counsel); *supra* note 1779 (discussing the hourly rate for an in-house attorney); *supra* note 1812 (calculating the combined hourly rate). This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate. *See supra* note 1812 (discussing the reduction in the combined hourly rate).

[1841] *See supra* Section VIII.D.3.b.

[1842] *See supra* Section VIII.C.2.

[1843] *See supra* Section VIII.D.3.b.

[1844] *See supra* notes 1830–1832 and accompanying text.

[1845] *See, e.g.,* SIFMA Letter I; Financial Services Roundtable Letter; NASAA Letter.

[1846] *See* SIFMA Letter I.

[1847] *See supra* Section VIII.D.3.b.

and engineers and engineering firms. The Commission believes that to allow investment advisers to register as municipal advisors using Form ADV would not provide comparable information about certain associated persons of municipal advisors.

In addition, requiring municipal advisors to file a registration form specifically tailored to their municipal advisory activities is consistent with the broader public interest to make available to the public information about municipal advisors. Absent a form specific to municipal advisors, a municipal entity or obligated person seeking information about a municipal advisor may not realize that the data was available on Form BD or Form ADV. The Commission believes that persons seeking to compile, compare, and analyze data pertaining to the entire universe of registered municipal advisors, and regulators overseeing compliance with the rules and regulations applicable to municipal advisors, should be able to access relevant information easily within one system.[1848]

As proposed and adopted, Form MA will permit municipal advisors, to the extent that the disclosures required on Form MA have been disclosed on Form ADV or BD, to incorporate such information by reference.[1849] Specifically, each of the DRPs of Form MA permits incorporation by reference to DRPs with similar disclosure requirements that are already on file with regulators. The disclosures required on the DRPs are generally the disclosures where the most significant amount of detail is requested on Form MA and on which applicants will likely need to expend the most time and effort.[1850] The Commission believes allowing incorporation by reference is appropriate because it will reduce redundancy and costs that some municipal advisors will incur in completing Form MA.[1851]

Another alternative to the rules and forms adopted today would be to require, as the Commission proposed, each natural person municipal advisor to register with the Commission on Form MA–I separately. The Commission received several comments objecting to this requirement. Some commenters argued that there was no statutory justification to register natural persons as municipal advisors separately.[1852] Commenters also stated that registering individuals would be excessively burdensome,[1853] including on small municipal advisors.[1854] Another commenter stated that dual reporting on Form MA and Form MA–I could lead to confusion and inadvertent inconsistencies in the information.[1855] As discussed above, the Commission has decided not to require natural person municipal advisors (other than sole proprietors) to register as municipal advisors (although such persons will be subject to the other requirements of the municipal advisor regulatory regime).[1856] Had the Commission required natural person municipal advisors to register with the Commission, these persons would have incurred aggregate costs of approximately $5,602,500.[1857] The Commission recognizes, however, that municipal advisory firms will now bear this cost to submit Form MA–I for natural person municipal advisors, which as discussed above will be $5,602,500.[1858]

4. Books and Records To Be Made and Maintained by Municipal Advisors (Rule 15Ba1–8)

As part of the permanent registration regime mandated by the Dodd-Frank Act, Rule 15Ba1–8 sets forth requirements for books and records relating to the business of municipal advisors. Among other things, the rule requires that municipal advisory firms maintain and preserve all books and records required to be made and kept under the rule for a period of not less than five years, the first two years in an easily accessible place.[1859]

a. Recordkeeping Costs and Benefits

Municipal advisors are likely to incur a number of costs in connection with the recordkeeping requirements, including recurring costs related to the maintenance and storage of books and records, as required by the rule. Municipal advisory firms will also need to provide applicable training to ensure compliance with the recordkeeping requirements. In the Proposal, the Commission estimated that the ongoing annual labor cost for all municipal advisory firms to comply with the recordkeeping requirement would be approximately $9,050,000.[1860] The Commission now estimates that the annual labor cost for all municipal advisory firms to comply with the recordkeeping requirement will be approximately $8,777,860.[1861]

Municipal advisors should already maintain books and records as part of their day-to-day operations. The recordkeeping requirement, however, provides specific parameters relating to the retention and maintenance of certain books and records that may be more extensive than current market practices. Nevertheless, the Commission does not believe that currently operating municipal advisory firms that already keep business records similar to those required by the rule will be subject to significant additional recordkeeping costs as a result of the rule. For example, municipal advisors already registered with the Commission as broker-dealers and/or investment advisers likely already retain this type of information.

As noted above, the Commission recognizes that these costs may impact those municipal advisory firms that are not already registered under another

[1848] The ability to incorporate by reference any required information about the disciplinary history of an applicant or associated person from a DRP or other disclosure that already has been filed relieves the regulatory burden on applicants who can do so. However, the Commission recognizes that such incorporation by reference may make it somewhat more difficult for regulators and other market participants to compile, compare, and analyze data regarding municipal advisors within one system.

[1849] *See supra* Section III.A.2.

[1850] *See supra* Section III.A.2.b.

[1851] As discussed above, the Commission's estimates of the time required to complete Form MA and Form MA–I represent averages. The Commission emphasizes that, depending on the specific circumstances of the municipal advisory firm, the initial burden to complete Form MA and Form MA–I will vary greatly from respondent to respondent given uncertainty about the number of municipal advisors that will incorporate by reference and the extent of information that will be incorporated by reference. Accordingly, although Form MA and Form MA–I generally allow incorporation by reference of certain information, the Commission does not have the information necessary to provide a reasonable estimate of the extent to which the ability to incorporate by reference will reduce the burden estimates for Form MA and MA–I for a particular firm.

[1852] *See, e.g.,* SIFMA Letter I; MSRB Letter.

[1853] *See, e.g.,* SIFMA Letter I; Deloitte Letter.

[1854] *See, e.g.,* Acacia Financial Group Letter.

[1855] *See* Deloitte Letter.

[1856] *See supra* Section III.A.2.a.

[1857] 33,750 (estimated initial burden for completion and submission of Form MA–I during the first year) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $5,602,500. *See supra* note 1495 and accompanying text; *supra* note 1812 (calculating the combined hourly rate).

[1858] *See supra* note 1857 and accompanying text.

[1859] *See supra* Section III.C.

[1860] *See* Proposal, 76 FR 878.

[1861] 910 (number of Form MA applicants) × 182 hours (estimated average hourly burden for municipal advisory firms to comply with the books and records requirement) × $53 (hourly rate for a General Clerk) = $8,777,860. *See supra* notes 1688–1691 and accompanying text. The $53 per hour figure for a General Clerk is from the SIFMA's *Office Salaries in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead. The Commission is updating the hourly rate for a General Clerk from $50 to $53 to conform to SIFMA's *Office Salaries in the Securities Industry 2012.* This estimate is lower than the estimate in the Proposal because the Commission estimates there will be fewer initial Form MA applicants than was estimated in the Proposal. *See supra* notes 1442–1446 and accompanying text.

regulatory regime to a greater degree than they would impact municipal advisory firms that have previously registered as investment advisers or brokers-dealers. With respect to the books and records requirements of Rule 15Ba1–8, the Commission currently anticipates that municipal advisory firms may incur one-time costs in establishing the new internal controls and systems necessary to comply with the recordkeeping requirements of the rule. The Commission believes that the costs to establish new internal controls will be less for municipal advisory firms that are currently regulated with respect to their other activities because the final rule allows some records to be maintained in compliance with those other regulations.[1862] The Commission does not have the information necessary to provide a reasonable estimate of the difference in costs for firms that already have internal controls and systems because these internal controls and systems vary from firm to firm. The Commission believes that these costs may also be reduced for municipal advisory firms that have voluntarily adopted similar recordkeeping practices.[1863] The Commission anticipates, however, that these costs may be higher for solicitors and for other municipal advisory firms that are not otherwise regulated or have not voluntarily adopted similar recordkeeping practices.

The Commission has made two substantive modifications to the recordkeeping requirements since the Proposal. As discussed above, Rule 15Ba1–8(a)(2) will require municipal advisors to maintain general ledgers, a requirement that was inadvertently left out of proposed Rule 15Ba1–7.[1864] In addition, as discussed above, Rule 15Ba1–8(a)(8) will require each municipal advisory firm to retain written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such registered municipal advisor.[1865] In light of these changes, the Commission now estimates that the average annual burden for a municipal advisory firm to comply with the recordkeeping requirements will be approximately 182 hours.

One commenter argued that the information technology and storage facilities required for all email or similar electronic communications is expensive. The commenter believed that, regardless of whether a firm were to develop a technology solution in-house or hire an IT professional, the cost would be significant to firms, especially those with limited revenue.[1866] This commenter, however, did not provide specific figures by which to recalculate the Commission's estimate, making it difficult to evaluate these assertions.

As stated above, the books and records estimate, as proposed, was meant to include storage costs and any needed technology refinements or upgrades. The Commission staff understands based on discussions with market participants that, although larger financial institutions may generally need to invest in more expensive technology solutions to manage their recordkeeping, smaller municipal advisory firms with smaller clienteles may not require significant expenditures on storage and technology to the extent they retain most of their records in their existing email systems.[1867] Furthermore, the Commission staff understands that many of the smallest municipal advisory firms and sole proprietors may use third-party electronic mail systems that offer free and effectively unlimited cloud storage and would be less likely to incur significant storage costs. For these reasons, the Commission believes that the variety of technology and storage solutions, and their resulting costs, are properly accounted for in the cost estimates.

Another commenter asserted that the Commission used an hourly rate for the books and records cost that was too low for small entity municipal advisors. The commenter argued, ''[t]he figure [of 181 hours] was based on record keeping by 'General Clerks' at $50 per hour. If similar rules are imposed on Small Entity Municipal Advisors (many of whom are solo practitioners) that do not typically have 'General Clerks,' the correct hourly rate should be $170 per hour (a figure frequently used by the Commission in the Release), which would equate to $30,770 per advisor.''[1868]

While the Commission acknowledges that small municipal advisors do not typically employ General Clerks and that, in many cases, the municipal advisory professional himself may be responsible for maintaining the books and records of the firm, the Commission does not believe that it should use a higher hourly rate to estimate the recordkeeping burden for small municipal advisors for several reasons. The 182-hour estimate is an average annual hourly burden across all firms regardless of their size, and is based on the Commission's experience with other regulatory regimes. The Commission anticipates that larger municipal advisory firms that offer a variety of services to municipal entities and have significantly greater volumes of books and records will incur an annual burden greater than 182 hours, while smaller municipal advisory firms that have significantly lower volumes of books and records will incur an annual burden lower than 182 hours. Similarly, the $53 figure is an average hourly rate across all firms regardless of their size and is inclusive of the variability of costs across municipal advisors. The Commission does not have the information necessary to provide reasonable estimates of the differences in hourly burden among firms of various sizes, a separate average hourly burden for small entity municipal advisors, or the differences in hourly rates among firms of various sizes. The Commission is also unaware of any such data being publicly available. The Commission staff also understands that some small municipal advisors employ part-time staff to perform certain business and clerical functions and that the costs of such employees are less likely to reflect the costs for compliance personnel at larger municipal advisory firms or the hourly rate suggested by the commenter. The Commission assumes that municipal advisors will use the most cost-effective approach available, depending on their size and specific circumstances, to comply with the recordkeeping requirement. Accordingly, the Commission does not believe that it should use a higher hourly rate to estimate the

[1862] *See* Rule 15Ba1–8(e)(1). The Commission's estimated average burden to comply with the recordkeeping requirements includes the costs to establish new internal controls and systems necessary to comply with the recordkeeping requirements. However, the Commission recognizes that those firms should realize reduced costs by leveraging the existing internal controls and systems, as well as familiarity with books and records requirements under other regulatory regimes.

[1863] The Commission does not have the information necessary to provide a reasonable estimate of the difference in costs for firms that already have voluntarily adopted similar recordkeeping practices because these recordkeeping practices vary from firm to firm. However, the Commission recognizes that to the extent these recordkeeping practices are already in place, certain municipal advisors should incur lower costs to comply than those that do not have recordkeeping practices in place.

[1864] *See supra* notes 1359–1360 and accompanying text.

[1865] *See supra* Section VII.D.7.

[1866] *See* NAIPFA Letter.

[1867] Larger firms that already have technology solutions in place would likely incur lower costs than those that need to develop new technology solutions.

[1868] *See* Joy Howard WM Financial Strategies Letter.

recordkeeping burden for small municipal advisors.

However, as stated above, the Commission believes that small municipal advisory firms will likely incur lower annual costs for maintaining books and records than larger firms. The Commission recognizes that, although small municipal advisory firms and solo practitioners may maintain their books and records without a general clerk or additional staff assistance, such activity would not be costless. The Commission believes that it is appropriate to assume that, because small firms will utilize the most cost-effective approach available, per-hour costs attributable to the books and records requirements will be, at most, equivalent to the hourly rate for a General Clerk. Therefore, the Commission uses the hourly rate for a General Clerk to estimate the average cost across all municipal advisory firms, regardless of size. The Commission also addresses the burden for smaller municipal advisory firms in the Final Regulatory Flexibility Analysis below.[1869]

Despite these costs, as discussed above, the recordkeeping requirements will benefit the municipal securities market by enhancing the Commission's ability to oversee municipal advisors.[1870] Recordkeeping 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 examination program for regulated entities, which facilitates the Commission's review of their compliance with statutory mandates and with Commission rules.

b. Alternatives

As an alternative to the recordkeeping requirement adopted today, the Commission considered creating a unique recordkeeping requirement for municipal advisors different from the standard recordkeeping practices under federal securities law. The Commission has determined not to create a unique recordkeeping requirement because it expects that many entities already registered with the Commission in another capacity, such as investment advisers and broker-dealers, would likely incur higher, and in many ways redundant, costs to comply with this type of regime. As discussed above, the Commission estimates that the average hourly burden for municipal advisory firms to comply with the books and records requirement will be approximately 182 hours per year.[1871] The Commission anticipates that the average hourly burden estimate would be higher to the extent the alternative recordkeeping requirement did not allow entities to maintain books and records in a manner consistent with other regulations under the securities laws. As discussed above, with respect to the recordkeeping requirement adopted today, the Commission believes costs may be reduced for firms that are currently registered with the Commission with respect to their other activities (because the final rule allows some records to be maintained in compliance with those other regulations) and for firms that have voluntarily adopted similar recordkeeping practices.[1872] If the Commission established a unique recordkeeping requirement for municipal advisors, the Commission believes that many municipal advisors would incur higher costs due to the inability to leverage experience, systems, and practices developed to comply with the similar recordkeeping practices under federal securities law.

5. Exclusions From the Definition of Municipal Advisor

a. Programmatic, Registration, and Recordkeeping Costs and Benefits

As discussed above,[1873] the Dodd-Frank Act included a number of statutory exclusions from the definition of municipal advisor.[1874] The Commission is adopting interpretations of these statutory exclusions that are consistent with the Commission's understanding of Congress's intent not to provide blanket exclusions from the municipal advisor regulatory regime for underwriters, registered investment advisers, commodity trading advisors, attorneys, and engineers, regardless of the activities in which they are engaged. In adopting these interpretations, the Commission has considered the programmatic, registration, and recordkeeping costs that these persons would incur absent an exclusion from the definition of municipal advisor.

Given the limitations on the Commission's ability to conduct a quantitative assessment of the programmatic costs and benefits associated with interpreting the statutory exclusions,[1875] the Commission has considered the programmatic costs and benefits primarily in qualitative terms. In addition, the Commission has quantified many of the registration and recordkeeping costs that result from the final rules and forms. Relying primarily on the programmatic, registration, and recordkeeping costs and benefits, the Commission believes it is possible to identify those persons that, because of the activities in which they engage, appear to be the types of persons for which the other statutory requirements of Section 975 of the Dodd-Frank Act were not intended.

As discussed above, persons subject to the municipal advisor regulatory regime are subject to programmatic, registration, and recordkeeping costs. As indicated throughout this release, and as discussed further below, the Commission is mindful of these costs and has interpreted the statutory exclusions in a manner that is consistent with the purposes of Section 15B of the Exchange Act to regulate persons that engage in municipal advisory activities and that is intended to help minimize compliance burdens. The Commission's interpretations of the statutory exclusions are designed to reduce redundant regulation of entities engaged in activities related to municipal entities that are appropriately regulated under another regime. Accordingly, the Commission is adopting an interpretation of the statutory exclusion for underwriters that applies only to those underwriters that engage in municipal advisory activities that are within the scope of an underwriting.[1876] The Commission is also adopting an interpretation of the statutory investment adviser exclusion that would permit a registered investment adviser to provide advice concerning the investment of proceeds of municipal securities, but not advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and

[1869] *See infra* Section IX.

[1870] *See supra* Section VIII.D.1.a.

[1871] *See supra* Section VII.D.8.

[1872] *See supra* note 1862–1863 and accompanying text.

[1873] *See supra* Section III.A.1.c.

[1874] Section 15B(e)(4)(C) of the Exchange Act provides that the term municipal advisor does not include (1) a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in Section 2(a)(11) of the Securities Act); (2) any investment adviser registered under the Investment Advisers Act, or persons associated with such investment advisers who are providing investment advice; (3) any commodity trading advisor registered under the CEA or persons associated with a commodity trading advisor who are providing advice related to swaps; (4) attorneys offering legal advice or providing services that are of a traditional legal nature; or (5) engineers providing engineering advice. *See* 15 U.S.C. 78*o*–4(e)(4)(C).

[1875] *See supra* note 1742.

[1876] *See* Rule 15Ba1–1(d)(2)(i). In response to comments, the Commission is also providing lists of activities that the Commission would consider to be within or outside the scope of an underwriting. *See supra* Section III.A.1.c.iv.

other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person, without registering as a municipal advisor.[1877] Similarly, the Commission is adopting an interpretation of the statutory commodity trading advisor exclusion that is limited to registered commodity trading advisors and associated persons thereof providing advice related to swaps in the capacity as a registered commodity trading advisor that is subject to the Commodity Exchange Act.[1878] The interpretations of the statutory attorney exclusion and the statutory engineering exclusion the Commission is adopting today are designed to permit attorneys to offer legal advice or provide services that are of a traditional legal nature [1879] and engineers to provide engineering advice [1880] without having to register with the Commission as a municipal advisor. The Commission does not believe that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on the persons described above would provide benefits that would justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of municipal advisor regulation.

Because the Commission's interpretations of the statutory exclusions are consistent with Section 15B(e) of the Exchange Act, the Commission believes that those persons that do not currently qualify for a statutory exclusion should already be registered with the Commission and the MSRB under the temporary registration regime. Accordingly, because the Commission has interpreted the statutory exclusions consistent with the statute, the number of persons for which a statutory exclusion is available should not change significantly and any differences from the baseline with regard to the number of municipal advisors required to register with the Commission and the MSRB should be minimal. The Commission also believes that any differences from the baseline with regard to the programmatic costs and benefits related to the statutory requirements and MSRB rules that are currently operative should be minimal because they would have already been incurred under the temporary registration regime. In addition, there should be no significant impact on efficiency, competition, and capital formation relative to the baseline because those market participants for which an exclusion is not available should have already registered with the Commission and the MSRB under the temporary registration regime and be complying with the requirements of Section 15B of the Exchange Act and MSRB rules.

Those persons who provide municipal advisory services and are not excluded from the definition of municipal advisor as described above, however, will incur the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime. Accordingly, underwriters that engage in municipal advisory activities outside the scope of underwriting an issuance of municipal securities; investment advisers that provide advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of issuances of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation; commodity trading advisors that are not a registered commodity trading advisor or that provide advice with respect to an issuance of municipal securities or any municipal financial product other than a swap; attorneys that represent themselves as financial advisors or financial experts in connection with the issuance of municipal securities or municipal financial products and engage in municipal advisory activities; and engineers that provide municipal advisory activities beyond engineering advice, will incur the programmatic, registration, and recordkeeping costs discussed throughout this release.

The Commission believes such persons should continue to be subject to the municipal advisor regulatory regime, including a fiduciary duty to municipal entity clients and the standards of conduct, training, and testing as may be required by the Commission or the MSRB, and other requirements as may be imposed by the MSRB.[1881] As discussed above, the Commission believes that the municipal advisor regulatory regime could incentivize municipal advisors not to engage in misconduct relative to the baseline because of the enhanced disclosure requirements of the permanent registration regime.[1882] Municipal advisors will continue to be subject to Commission oversight, including periodic examinations, and may be subject to disciplinary action for misconduct.[1883] In addition, certain municipal advisors will now be subject to periodic examinations by FINRA to evaluate compliance with the Exchange Act, the rules and regulations thereunder, and MSRB rules.[1884]

b. Alternatives

One alternative to the rules adopted today would be for the Commission not to engage in additional rulemaking, and thus, not to further clarify the statutory exclusions from the definition of municipal advisor. As discussed above,[1885] the Commission believes that the assessment costs associated with determining whether a person would be required to register as a municipal advisor would be greater in the absence of the rules the Commission is adopting today. Without these rules, market participants would still need to analyze whether their activities fall within a statutory exclusion and would likely need to seek no-action relief and other guidance from the Commission or Commission staff, or risk failing to register with the Commission as required.[1886] The Commission believes that the final rules provide extensive guidance to market participants that should reduce the number of requests for no-action relief and other guidance from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.[1887]

The Commission also considered whether to interpret the statutory exclusions using a status-based approach, as suggested by commenters, rather than an activity-based approach. For example, some commenters called for an exclusion for broker-dealers that would exclude broker-dealers based on their status as a regulated entity.[1888] Similarly, some commenters argued that the statute excludes any registered

[1877] *See* Rule 15Ba1–1(d)(2)(ii).

[1878] *See* Rule 15Ba1–1(d)(2)(iii). Under this exclusion, a registered commodity trading advisor could provide advice relating to swaps without registering as a municipal advisor.

[1879] *See* Rule 15Ba1–1(d)(2)(iv).

[1880] *See* Rule 15Ba1–1(d)(2)(v).

[1881] While the underwriting activities of brokers, dealers, and municipal securities dealers in connection with an issuance of municipal securities are currently subject to MSRB rules, those rules generally do not apply to municipal advisory activities that are outside the scope of an underwriting.

[1882] *See supra* Section VIII.D.1.a.

[1883] *See supra* note 1680 and accompanying text.

[1884] *See* 15 U.S.C. 78*o*–4(b)(2)(E); 15 U.S.C. 78*o*–4(c)(7)(A)(iii).

[1885] *See supra* Section VIII.D.1.c.

[1886] In addition, without this guidance, a greater number of market participants would likely decide to register as municipal advisors unnecessarily and thereby incur the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime.

[1887] *See supra* Section VIII.D.1.c.

[1888] *See supra* note 580 and accompanying text.

investment adviser, without limitation.[1889]

Although persons excluded under a status-based approach would not incur the programmatic, registration, and recordkeeping costs of the regulatory regime, the Commission has determined that to provide status-based exclusions would be inconsistent with the purposes of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities. The Commission believes that a status-based approach would permit many persons to provide municipal advisory services without being subject to the regulatory regime, which could cause municipal entities and obligated persons to receive municipal advice without the protections of the regime and limit the Commission's ability to oversee the municipal advisory activities of those excluded persons. The Commission believes these other regimes are not designed to address directly municipal advisory activities and may not provide similar protections to municipal entities and obligated persons. In addition, persons excluded under a status-based approach would not be required to register with the Commission, which would reduce any benefits of the permanent registration regime to the municipal advisor selection process.[1890] The Commission is also concerned that interpreting the exclusions using a status-based approach could create inappropriate competitive advantages for covered categories of market participants.

Another alternative the Commission considered was to interpret some of the statutory exclusions in a manner that would allow otherwise regulated persons to engage in municipal advisory activities that are solely incidental to their regulated activities. Some commenters stated that the Commission should exclude from registration broker-dealers that provide advice that is solely incidental to a transaction, similar to the broker-dealer exclusion under Section 202(a)(11)(C) of the Investment Advisers Act.[1891] Another commenter expressed concern that commodity trading advisers that provide ancillary services in connection with advice related to swaps would need to register as municipal advisors if the ancillary services fall within the scope of municipal advisory activities and are not deemed to be the type of advice described in the commodity trading advisor exclusion.[1892]

The Commission does not believe it is necessary to interpret the statutory exclusions in a manner that would permit municipal advisory activities that are solely incidental to other regulated activities, and believes that the result would be substantially similar to a status-based approach.[1893] Interpreting the statutory exclusions in this manner could result in a difficult facts-and-circumstances analysis to determine whether the exclusions apply, which is unlikely to result in any assessment savings. In addition, the Commission has provided additional exemptions that would limit the circumstances under which a person could be considered a municipal advisor and the range of municipal financial products to which duplicative regulation could apply.[1894]

6. Exemptions From the Definition of Municipal Advisor

a. Programmatic, Registration, and Recordkeeping Costs and Benefits

As discussed above,[1895] the Dodd-Frank Act granted the Commission authority to conditionally or unconditionally exempt, by rule or order, upon its own motion or upon application, any municipal advisor or class of municipal advisors from any provision of Section 15B of the Exchange Act or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B.[1896] The final rules provide exemptions from the definition of municipal advisor, subject to specified conditions, for (1) public officials and employees of municipal entities and obligated persons; (2) banks; (3) swap dealers; (4) accountants; (5) persons engaging in municipal advisory activities with a municipal entity or obligated person that is represented by an independent registered municipal advisor; and (6) persons responding to RFPs or RFQs. As discussed below, the Commission believes that these exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 15B. In providing these exemptions, the Commission has considered the programmatic, registration, and recordkeeping costs, which are discussed throughout the economic analysis, that these persons would incur absent an exemption from the definition of municipal advisor. The Commission has designed these exemptions to provide that municipal entities and obligated persons receive municipal advisory services with the protections of the municipal advisor regulatory regime.

Given the limitations on the Commission's ability to conduct a quantitative assessment of the programmatic costs and benefits associated with providing these exemptions,[1897] the Commission has considered these costs and benefits primarily in qualitative terms. In addition, the Commission has quantified many of the registration and recordkeeping costs that result from the final rules and forms. Relying primarily on the programmatic, registration, and recordkeeping costs and benefits, the Commission believes it is possible to identify those persons that, because of the activities in which they engage, appear to be the types of persons for which the other statutory requirements of Section 975 of the Dodd-Frank Act were not intended.

The Commission is exempting from the definition of municipal advisor: (1) Any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity; and (2) any employee of a municipal entity or obligated person to the extent that such person is acting within the scope of such person's employment.[1898] The Commission believes that this exemption will significantly reduce the number of individuals who would otherwise have needed to register as municipal advisors. Some commenters

[1889] *See, e.g.,* Vanguard Letter; IAA Letter; ICI Letter.

[1890] *See supra* Section VIII.D.3.b.

[1891] *See supra* note 580 and accompanying text.

[1892] *See* MFA Letter.

[1893] *See supra* notes 1888–1890 and accompanying text.

[1894] For example, the Commission is providing an exemption for any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor. *See* Rule 15Ba1–1(d)(3)(vi). In addition, the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments. *See* Rule 15Ba1–1(d)(3)(vii).

[1895] *See supra* Section III.A.1.c.

[1896] *See* 15 U.S.C. 78*o*–4(a)(4).

[1897] *See supra* note 1742.

[1898] *See* Rule 15Ba1–1(d)(3)(ii). *See also supra* note 507 and accompanying text (discussing the Commission's interpretation of the statutory exclusion from the definition of ''municipal advisor'' for employees of municipal entities by exempting such employees ''to the extent that such person is acting within the scope of such person's employment'').

asserted that, as proposed, thousands of board members would be required to register as municipal advisors.[1899]

The Commission believes the programmatic, registration, and recordkeeping costs such board members would incur would not justify the benefits of registration for a number of reasons. The Commission believes that individuals who engage in deliberative and decision-making functions with respect to municipal financial products or the issuance of municipal securities as part of their duties as members of a governing body should not have to register as municipal advisors because they are agents of the municipal entity that is the intended recipient of the protections of the municipal advisor regulatory regime. Board members and other officials (appointed and elected alike, as well as their duly appointed designees) may be subject to state and local law, including fiduciary duties and ethics laws, and the statutory qualifications for such members' board position may be significant to the mission of the municipal entity. In addition, as noted by commenters, there would be costs to municipal entities as the requirement to register as a municipal advisor could reduce the number of persons willing to volunteer for boards or could limit what volunteers would say. The Commission believes this exemption appropriately balances consideration of the need to protect municipal entities with the preservation of volunteer services by not requiring board members to register as municipal advisors.

The Commission is also providing exemptions from the definition of municipal advisor for certain market participants: banks, accountants, and swap dealers. As discussed above, persons subject to the municipal advisory regulatory regime are subject to a series of programmatic, registration, and recordkeeping costs. The Commission is exempting from the definition of municipal advisor banks engaging in certain municipal activities,[1900] certain swap dealers, and certain accountants.[1901] These exemptions are designed to reduce redundant regulation of entities engaged in activities related to municipal entities that are appropriately regulated under another regime. The Commission does not have the information necessary to provide a reasonable estimate of the number of persons who will rely on these exemptions because Form MA–T does not collect data on banks, swap dealers, or accountants. To the extent these entities are not required to register as municipal advisors because of an exemption, they will not incur the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis, and thus, will realize cost savings.

The Commission does not believe that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on these persons would provide benefits that would justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of municipal advisor regulation.[1902] Those persons that provide municipal advisory services beyond the activities described above, and thus, that do not qualify for one of the exemptions, however, will incur the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime. The Commission believes that the exemption for banks will help ensure that parties engaging in key municipal advisory activities are registered, while permitting banks to continue to provide banking services to municipal entities and obligated persons for which they are currently subject to regulation.[1903] Similarly, the final rule provides exemptions for registered swap dealers that are consistent with the exemptions promulgated under Title VII of the Dodd-Frank Act.[1904] The Commission believes it is appropriate to provide an accountant exemption that includes accountants providing audit or other attest services since both audit and other attest services are generally subject to regulation and professional standards (including independence requirements) [1905]—requirements that could potentially conflict with a municipal advisor's fiduciary duty to its municipal entity clients.[1906]

The Commission is also exempting from the definition of municipal advisor any persons engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor [1907] with respect to the same aspects of a municipal financial product or an issuance of municipal securities, subject to certain requirements.[1908] As long as a municipal entity is represented by an independent registered municipal advisor, the Commission believes it is desirable to allow municipal entities to receive as much advice and information as possible from a variety of sources, even if the providers of such advice are not subject to a fiduciary duty, because such advice could lead to better

[1899] *See, e.g.,* Bachus Letter; Marchant Letter.

[1900] *See* Rule 15Ba1–1(d)(3)(iii). Because the Commission is exempting from the definition of municipal advisor persons that provide advice with respect to ''investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments'' (*see* Rule 15a1–1(d)(2)(vii)), the Commission believes that the performance of many of the bank activities and services about which commenters were concerned will not require banks to register as municipal advisors.

[1901] The Commission is exempting from the definition of municipal advisor any accountant to the extent that the accountant is providing audit or other attest services, preparing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person. *See* Rule 15Ba1–1(d)(3)(i).

[1902] The Commission received a number of comments about the costs that would be imposed on banks under the Proposal. *See, e.g.,* Old Point Bank Letter; Union Bank Letter; Texas Bankers Association Letter; American Bankers Association Letter II. These comment letters are discussed extensively earlier in this release.

[1903] To the extent a bank provides advice with respect to a municipal derivative or engages in any other non-exempted municipal advisory activity through a SID, Rule 15Ba1–1(d)(4) will permit the SID to register as a municipal advisor rather than the bank itself. The Commission believes that permitting SIDs to register instead is in the public interest in that it will ensure that municipal entities and obligated persons receive the regulatory protection intended by the statute while not imposing the burdens of the municipal advisor regulatory regime (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) on the bank as a whole.

[1904] The final rule exempts any registered swap dealer to the extent that such dealer recommends a municipal derivative or a trading strategy that involves a municipal derivative for sale by such dealer or an affiliated registered swap to a municipal entity or obligated person, provided that the dealer meets any applicable safe harbor requirements for parties to such transactions under the CFTC's regulatory regime. *See supra* Section III.A.1.c.vi. The Commission notes that swap dealers will incur costs to qualify for the exemption under the applicable regulatory regime, and that these costs will likely be lower than the programmatic, registration, and recordkeeping costs of the municipal advisor regulatory regime.

[1905] *See* AICPA Code of Professional Conduct ET 201.01, 202.01. *See also* AICPA Attestation Standards AT § 101.06 (providing that ''[a]ny professional service resulting in the expression of assurance must be performed under AICPA professional standards that provide for the expression of such assurance'').

[1906] *See* AICPA Attestation Standards AT § 101.35, 101.36. Accountants providing attest services are also required to meet general standards related to adequate technical training and proficiency; adequate knowledge of subject matter; suitability and availability of criteria; and the exercise of due professional care. *See* AICPA Attestation Standards AT § 101.19 to 101.41.

[1907] The term ''independent registered municipal advisor'' means a municipal advisor registered pursuant to Section 15B of the Exchange Act (15 U.S.C. 78*o*–4) and the rules and regulations thereunder, and that is not, and within the past two years was not, associated with the person seeking to rely on Rule 15Ba1–1(d)(3)(vi). *See* Rule 15Ba1–1(d)(3)(vi)(A).

[1908] *See* Rule 15Ba1–1(d)(3)(vi). *See also supra* notes 564–572 and accompanying text (discussing the requirements for the exemption).

decision making where the municipal entity or obligated person also receives the advice of an independent registered municipal advisor.[1909] The Commission, therefore, does not believe at this time that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on persons providing advice to a municipal entity that is otherwise represented by an independent municipal advisor would provide benefits that justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of registration.

As discussed above, the Commission believes that underwriters in negotiated deals are the persons most likely to rely on this exemption.[1910] The Commission estimates the total initial PRA burden to rely on this exemption in the first year will be $297,339.[1911] The Commission estimates that the ongoing PRA burden to rely on this exemption in each year after the first will be $138,159.[1912] In comparison to the registration and recordkeeping costs, estimated above, the Commission believes that these costs will be minimal, and that persons relying on this exemption will realize cost savings by not being subject to the municipal advisor regulatory regime.

The Commission is also exempting from the definition of municipal advisor any person providing a response in writing or orally to an RFP or RFQ from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities, provided that such person does not receive separate direct or indirect compensation for advice provided as part of such a response.[1913] The Commission believes that responses to RFPs and RFQs by themselves do not constitute municipal advisory activities, and thus, that imposing an additional layer of regulation, including the fiduciary duty imposed upon municipal advisors when advising municipal entities, on persons responding to RFPs and RFQs would provide benefits that justify the burden (*i.e.,* the programmatic, registration, and recordkeeping costs discussed throughout the economic analysis) of registration. The Commission does not have the information necessary to provide a reasonable estimate of the number of persons who may rely on this exemption because the Commission does not have data regarding the number of persons who respond to RFPs and RFQs, and is unaware of such data being publicly available. The Commission staff understands based on discussions with market participants, however, that a significant number of persons respond to RFPs and RFQs, some of which would be registered municipal advisors; others may be already-regulated entities, such as Commission-registered investment advisers and broker-dealers, whose responses may be subject to fair dealing, suitability, fiduciary, or other standards.

The exemptions adopted today could allow for more-efficient use of resources by persons that are no longer required to register with the Commission as a municipal advisor pursuant to one of the exemptions in the final rules because such persons will now be able to put to use the resources that would otherwise have been spent registering. However, to the extent that such persons were registered under the temporary registration regime, the absence of current information about such persons on Form MA and increased difficulty in finding information about such persons could reduce informational efficiency relative to the baseline. The exemptions could also improve competition relative to the baseline among exempted persons engaging in those activities that are consistent with the relevant exemption to the extent they remain in their respective industry as a result of an exemption.[1914]

b. Alternatives

One alternative to the rules adopted today would be for the Commission not to engage in additional rulemaking, and thus, not to provide any exemptions from the definition of municipal advisor. As discussed above, the Commission does not believe that the benefits that would accrue if the Commission did not provide the exemptions would justify the costs that would accrue from subjecting certain market participants to potentially conflicting and redundant obligations under the municipal advisor regulatory regime. In addition, the Commission believes the exemptions provide greater clarity to market participants by delineating the types of activities that are not subject to the municipal advisor regulatory regime. To the extent that a person can determine that registration as a municipal advisor is not required based solely on the availability of an exemption, the Commission believes the exemptions adopted today should lead to lower assessment costs for many firms. For example, board members should be able to determine relatively easily whether registration as a municipal advisor is required. Absent these rules, it is likely that market participants would need to seek no-action relief and other guidance from the Commission or Commission staff, or risk failing to register with the Commission, if required. The Commission believes the final rules provide greater clarity to market participants that should allow them to make determinations without requesting interpretations from the Commission or Commission staff, which, in turn, should lead to lower assessment costs for many firms.

The Commission also considered whether to provide exemptions using a status-based approach rather than an activity-based approach. For example, some commenters called for a blanket exemption for swap dealers, arguing that registration as a municipal advisor would be duplicative.[1915] Similarly, some commenters recommended that municipal advisor regulation should not apply to banks since they are already regulated.[1916]

[1909] The Commission staff understands based on discussions with market participants that market participants and others, including underwriters, often are aware of important facts and are in a position to offer valuable advice and information to municipal entities and obligated persons. The Commission does not want to curtail the receipt of such advice and information so long as the municipal entities and obligated persons are represented by independent registered municipal advisors who are subject to a fiduciary and other duties and who can help the municipal entities and obligated persons evaluate the advice and identify potential conflicts of interest.

[1910] *See supra* Section VII.D.9.

[1911] ((210 hours (estimated burden to draft the written representation) + 210 hours (estimated burden to draft the required disclosure) × $379 (hourly rate for an in-house attorney)) + (2,193 hours (estimated burden to obtain the written representation) × $63 (hourly rate for a Compliance Clerk)) = $297,339. *See supra* note 1611 and accompanying text; *supra* note 1779 (calculating the hourly rates for an in-house attorney and for a Compliance Clerk).

[1912] 2,193 hours (estimated initial burden to rely on exemption) × $63 (hourly rate for a Compliance Clerk) = $138,159. *See supra* note 1612 and accompanying text; *supra* note 1779 (calculating the hourly rate for a Compliance Clerk).

[1913] *See* Rule 15Ba1–1(d)(3)(iv).

[1914] For example, if swap dealers were required to register as municipal advisors, some might determine to no longer sell swaps to municipal entities and obligated persons. The exemption may incentivize such swap dealers to stay in the market and compete with each other.

[1915] *See supra* note 748 and accompanying text. Commenters also requested an exemption for security-based swap dealers. The Commission is not adopting an exemption for security-based swap dealers at this time. *See supra* notes 763–765 and accompanying text.

[1916] *See supra* notes 875–878 and accompanying text. Although the Commission is providing exemptions for certain banking activities, it has determined not to exempt banks entirely solely because of their status as otherwise regulated entities.

Although persons exempt under a status-based approach would not incur the programmatic, registration, and recordkeeping costs of the regulatory regime, the Commission believes that to provide status-based exemptions would be inconsistent with Congress's intent to regulate persons that engage in municipal advisory activities. The Commission believes that since the exclusions for regulated entities in Section 975 of the Dodd-Frank Act are limited in scope to certain regulated activity, any exemptions the Commission provides should be similarly limited. For example, the Commission believes that a bank that provides advice with respect to municipal derivatives or the issuance of municipal securities should not be exempt unless the bank qualifies for another exclusion or exemption. Similarly, the Commission believes that a registered swap dealer should be exempt only if it meets the requirements of Rule 15Ba1–1(d)(3)(v). The Commission believes that a status-based approach would permit many persons to provide municipal advisory services without being subject to the regulatory regime, which could cause municipal entities and obligated persons to receive municipal advice without the investor protections of the regime. The Commission also believes such an approach could limit the Commission's ability to oversee the municipal advisory activities of those exempt persons. The Commission believes these other regimes are not designed to address directly municipal advisory activities and may not provide similar protections to municipal entities and obligated persons. In addition, persons exempt under a status-based approach would not be required to register with the Commission, which would reduce any benefits of the regime to the municipal advisor selection process.[1917] The Commission is also concerned that providing status-based exemptions could create inappropriate competitive advantages for covered categories of market participants.

IX. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with Section 4(a) of the Regulatory Flexibility Act (''RFA'').[1918] This FRFA relates to Rules 240.15Ba1–1 through 240.15Ba1–8 under the Exchange Act, which set 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. The Commission prepared an Initial Regulatory Flexibility Analysis (''IFRA'') in conjunction with the Proposal.[1919]

A. Need for and Objectives of the Rules

The final rules and forms establish a permanent registration regime for municipal advisors in accordance with Section 975 of the Dodd-Frank Act. Section 15B of the Exchange Act, as amended by the Dodd-Frank Act, is intended generally to strengthen oversight of the municipal securities markets and to broaden current municipal securities market protections to cover, among other things, previously unregulated market activity. The rules and forms are designed to meet this mandate by requiring each municipal advisor to provide basic identifying information, a description of its activities, and facts regarding disciplinary history and conflicts of interest, if any.

The Commission believes that the information provided pursuant to these rules and forms will aid municipal entities, obligated persons, and others in choosing municipal advisors or engaging in transactions with municipal advisors, including participating in transactions of municipal securities offerings in which a municipal advisor provided municipal advisory services. In addition, the information disclosed pursuant to the rules and forms will provide significant value to the Commission in its oversight of municipal advisors and their activities in the municipal securities markets.

B. Significant Issues Raised by Public Comment

In the Proposal, the Commission solicited comment on the IRFA. In particular, the Commission sought comment on the number of small entities that would be subject to the proposed rules and forms; compliance burdens and how they would affect small entities; and whether the proposed rules and forms would have any effects that have not been discussed.[1920] In addition, the Commission requested 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.[1921]

The Commission received approximately ten comment letters that provided specific evaluative comments about the IRFA and the potential effect of the rules on small businesses. Most of the commenters were concerned that the requirements of the permanent registration regime would be too costly and burdensome for small entity municipal advisors.[1922] Several commenters emphasized in particular that the Small Business Act (''SBA'') threshold of $7 million in revenues that the Commission estimated for small businesses was too high.[1923]

Many commenters recommended that the Commission create exemptions for small independent advisors.[1924] Two commenters suggested exempting from registration municipal advisors involved in transactions below a debt financing limit.[1925] One commenter suggested the Commission allow small municipal advisors to convert their temporary registration to permanent status by agreeing to observe a fiduciary duty to clients and filing Form ADV (Part 1) with FINRA.[1926] Another commenter recommended small firms be allowed to pay lower registration fees to the MSRB.[1927] The Commission addresses these comments below.[1928]

The Commission recognizes that small municipal advisors are concerned with the potential burdens that the permanent registration regime may impose. The Commission recognizes that some municipal advisory firms, including some smaller municipal advisory firms and sole proprietors, may exit the market for various reasons, including the costs related to the registration and recordkeeping

[1917] *See supra* notes 1823–1832 and accompanying text.

[1918] 5 U.S.C. 604(a).

[1919] *See* Proposal, 76 FR 878–81.

[1920] *See id.* at 881.

[1921] *See id.*

[1922] *See, e.g.,* Fieldman Rolapp Letter; MSRB Letter; NAIPFA Letter; Public FA Letter; Ranson Financial Consultants Letter; Tamalpais Advisors Letter.

[1923] *See, e.g.,* Chancellor Financial Associates Letter; Fieldman Rolapp Letter; NAIPFA Letter; Public FA Letter; Ranson Financial Consultants Letter; Tamalpais Advisors Letter; Joy Howard WM Financial Strategies Letter (''[B]y establishing a threshold of $7 million in annual receipts, the Commission is likely to determine that there are few, if any, rules that would 'impose a regulatory burden on small entities.' Such a conclusion would likely be true for firms that have millions of dollars in annual receipts; however, most independent financial advisor firms have significantly lower revenues.'').

[1924] *See, e.g.,* Bradley Payne Letter; Chancellor Financial Associates Letter; Ranson Financial Associates Letter; Specialized Public Finance Letter; Sullivan Letter; Tamalpais Advisors Letter.

[1925] *See* Chancellor Financial Associates Letter (suggesting ''a limit predicated on the Internal Revenue Code's $10 million limit (during a calendar year) in order for an issuer's bonds to be bank-qualified''); Ranson Financial Associates Letter (suggesting ''that if a debt financing does not exceed a certain size or is of a certain nature, that a firm would not have to register'').

[1926] *See* Specialized Public Finance Letter.

[1927] *See* Sullivan Letter.

[1928] *See infra* Section IX.C.3.

requirements in the final rules and forms. The requirements under the final rules and forms were designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act. The Commission continues to believe that the costs associated with municipal advisor registration generally will not be overly burdensome for small firms, and notes that small municipal advisory firms and sole proprietors may exit the market for a number of reasons, including business reasons separate from the costs incurred with respect to the permanent registration regime.

C. Small Entities Subject to the Rule

In developing the final rules and forms, the Commission has considered their potential impact on small entities to which they will apply. The final rules and forms will affect municipal advisors required to register with the Commission, including small municipal advisors. 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**.'' [1929] 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.[1930]

As stated above, several commenters emphasized in particular that the SBA threshold of $7 million in revenues that the Commission used for purposes of estimating the number of small businesses was too high.[1931] For example, one commenter countered that the median annual revenue of a four-person financial advisory firm was closer to $800,000, and thus, that the majority of such small advisory firms would earn annual revenue far below the $7 million threshold.[1932] This commenter and two others recommended a $1 million threshold for annual revenue as a more realistic number for small municipal advisors.[1933] Another commenter argued that, as a sole proprietorship, his firm has never generated more than $1 million in total revenue in any given year, and that for the past two years, his firm's gross revenue has never been over $350,000.[1934] This commenter suggested that, as an alternative to using the SBA threshold of $7 million, municipal advisors involved in transactions below a debt financing limit should be exempt from municipal advisor regulation.[1935]

The Commission has considered all public comments relating to the IRFA included in the Proposal. After considering these comments, the Commission has determined to continue to use the SBA threshold of $7 million in revenues to denote small businesses. The Commission did not have sufficient data regarding municipal advisors to propose a definition of ''small business'' or ''small entity'' for purposes of the municipal advisor regulatory regime. The Commission believes that it will benefit from analyzing data submitted on Form MA over time, as well as data others may collect once the permanent registration regime is in place, before deciding whether to establish a separate definition of ''small business'' or ''small organization'' in Rule 0–10 under the Exchange Act [1936] for purposes of municipal advisors.[1937] As the Commission obtains additional information about municipal advisory firms after the commencement of the permanent registration regime, the Commission may reevaluate the appropriateness of the annual receipt threshold. The Commission may then determine, if appropriate, to promulgate a definition of ''small business'' or ''small entity'' for purposes of municipal advisors, as it has done in other contexts.[1938]

In the Proposal, the Commission estimated that approximately 1,000 municipal advisory firms, including sole proprietors, would be required to complete Form MA.[1939] For purposes of the IRFA, the Commission believed that the proportion of small municipal advisory firms subject to the proposed rules compared to all Form MA applicants would be similar to the proportion of small registered broker-dealers compared to all registered broker-dealers.[1940] The Commission had previously estimated that approximately 17% of all broker-dealers are ''small'' for the purposes of the RFA.[1941] Thus, the Commission estimated that approximately 170 municipal advisory firms that would be required to register with the Commission would be small entities subject to the rules.[1942]

In connection with the Proposal, commenters did not provide estimates of how many municipal advisory firms would be small businesses or small organizations. One commenter asserted that ''the large majority of [independent public finance advisory firms] would fall within the definition of 'small business' that the SEC has proposed it adopt; indeed, a high percentage of [independent public finance advisory] firms likely generate revenue in amounts substantially less than $7 million per year.'' [1943] Other commenters, as noted above, also argued that most independent financial advisory firms earn annual revenues far less than $7 million.[1944]

With respect to municipal advisors registered with the Commission as investment advisers and/or broker-dealers, commenters did not provide, and the Commission is not aware of, any alternative reliable estimates for the percentage of small entities. The Commission continues to believe that the percentage of ''small'' broker-dealers (*i.e.,* 17%) is a reasonable estimate of the number of small entity municipal advisors that are registered with the Commission as investment advisers and/or broker-dealers. As discussed above, the Commission estimates that approximately 273 Form MA registrants will be municipal advisors registered with the Commission as investment advisers and/or broker-dealers.[1945] Thus, the Commission estimates that approximately 46 municipal advisors registered with the Commission as

[1929] 5 U.S.C. 601(3).

[1930] *See* 13 CFR 121.201.

[1931] *See supra* note 1923.

[1932] *See* NAIPFA Letter.

[1933] *See id.;* Tamalpais Advisors Letter; Fieldman Rolapp Letter.

[1934] *See* Chancellor Financial Associates Letter.

[1935] *See supra* note 1925.

[1936] 17 CFR 240.0–10.

[1937] Form MA, Item 10, will ask municipal advisors to indicate whether they meet the definition of ''small business'' or ''small organization.'' In addition, the Commission will leverage data collected by others (*e.g.,* the MSRB) to determine whether it should re-assess its determination of who is a small municipal advisor. As a result, in the future the Commission will have information it can use to reevaluate estimates of the number of small municipal advisors subject to its rules.

[1938] *See* 17 CFR 240.0–10.

[1939] *See* Proposal, 76 FR 864–65.

[1940] *See id.* at 879.

[1941] *See* Securities Exchange Act Release No. 61908 (April 14, 2010), 75 FR 21456, 21483 (April 23, 2010). *See also* Proposal, 76 FR 879.

[1942] 1,000 (estimated number of municipal advisors subject to the Rule) × 0.17 (Proposal's estimated percentage of municipal advisors that are small entities) = 170 small entity municipal advisors. *See* Proposal, 76 FR 879.

[1943] *See* NAIPFA Letter I.

[1944] *See supra* notes 1931–1934 and accompanying text.

[1945] *See supra* note 1456 and accompanying text.

investment advisers and/or broker-dealers will be small entities.[1946]

The Commission recognizes, however, as suggested by commenters, that a significant majority of municipal advisors not otherwise registered with the Commission and solicitors that will be required to register with the Commission may be small entities subject to the final rules and forms. Therefore, the Commission is revising its estimate to reflect its belief that approximately 90% of municipal advisors not otherwise registered with the Commission and solicitors earn annual revenue less than $7 million.[1947]

As discussed above, the Commission estimates that approximately 491 Form MA registrants will be municipal advisors not otherwise registered with the Commission [1948] and 146 will be solicitors.[1949] Thus, the Commission estimates that 573 municipal advisors not otherwise registered with the Commission and solicitors will be small entities.[1950] In total, the Commission estimates that approximately 619 municipal advisory firms will be small entities.[1951]

In the Proposal, the Commission also estimated that, with respect to Form MA–I, only those that are sole proprietors and meet the annual receipts threshold would be considered small entities subject to the proposed rules.[1952] The Commission stated in the Proposal that, because all sole proprietors would be required to complete Form MA in addition to Form MA–I, sole proprietors that would be small entities subject to the proposed rules (*i.e.,* that are under the ''small entities'' annual receipts threshold) were already counted among the original estimate of 170 small entities calculated in the Proposal.[1953]

Although, as discussed above, the Commission is revising its estimate of the total number of municipal advisory firms that will be considered to be small entities, the Commission did not receive comment regarding, and is not revising its approach regarding, the estimate of the number of small entities with respect to Form MA–I. The Commission continues to believe that, because all sole proprietors must complete both Form MA and Form MA–I, those sole proprietors that will be considered small entities are already counted among the new estimate of 619 small entities. Thus, the Commission maintains that it will not be necessary to further estimate the number of small entities with respect to Form MA–I.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The final rules and forms establish a permanent registration regime for municipal advisors, including small municipal advisors, which consists of Form MA, Form MA–I, Form MA–W, and Form MA–NR. The final rules also establish recordkeeping requirements for registered municipal advisors, including small municipal advisors.[1954] These requirements and the burdens on small municipal advisors are discussed below. The Commission received several comment letters that addressed the Commission's burden estimates.[1955]

Rule 15Ba1–2 imposes costs on all municipal advisors, including small municipal advisors, by requiring each person applying for registration with the Commission as a municipal advisor to complete Form MA and file the form electronically with the Commission. In addition, a person applying for registration as a municipal advisor must complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf and file each Form MA–I electronically with the Commission.[1956] Each Form MA will be considered filed with the Commission upon acceptance of Form MA, together with all additional required documents, including all required Form MA-Is, by the Commission's EDGAR system.[1957]

In the Proposal, the Commission estimated that the average initial cost per applicant to complete Form MA and the initial self-certification would be approximately $1,110,[1958] and the average initial cost per applicant to complete Form MA–I and the initial self-certification would be approximately $510.[1959] The Commission received comment letters that addressed the Commission's burden estimates for Form MA [1960] and Form MA–I.[1961] The Commission now estimates that the average initial PRA cost per applicant to complete Form MA will be approximately $581.[1962] The Commission also estimates that the average initial PRA cost for a municipal advisory firm to complete Form MA–I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf will be approximately $498.[1963] The total initial cost incurred by a municipal advisor to register with the Commission as a municipal advisor will depend on a number of factors,

[1946] 273 (estimated number of municipal advisors registered with the Commission as investment advisers and/or broker-dealers) × 0.17 (estimated percentage of municipal advisors registered with the Commission as investment advisers and/or broker-dealers that are small entities) = 46.41 small entity municipal advisors registered with the Commission as investment advisers and/or broker-dealers.

[1947] *See, e.g.,* NAIPFA Letter I (indicating that smaller financial advisory firms' average revenue of approximately $200,000 per natural person municipal advisor). As discussed above, the Commission estimates that firms not otherwise registered with the Commission and solicitors will have, respectively, an average of ten and five natural person employees who engage in municipal advisory activities on the firm's behalf. *See supra* text accompanying notes 1458 and 1461. Assuming average revenues of $200,000 per natural person municipal advisor, such entities would likely have revenues far below $7 million. However, the Commission believes a small number of such firms are likely to have revenues in excess of $7 million. For these reasons, the Commission estimates that approximately 90% of municipal advisors not otherwise registered with the Commission and solicitors earn annual revenue less than $7 million.

[1948] *See supra* note 1459 and accompanying text.

[1949] *See supra* note 1463 and accompanying text.

[1950] 637 (estimated number of municipal advisors not otherwise registered with the Commission and solicitors) × 0.90 (estimated percentage of municipal advisors not otherwise registered with the Commission and solicitors that are small entities) = 573.3 small entity municipal advisors not otherwise registered with the Commission and small entity solicitors.

[1951] 573 small entity municipal advisors not otherwise registered with the Commission and small entity solicitors + 46 small entity municipal advisors registered with the Commission as investment advisers and/or broker-dealers = 619 small entity municipal advisory firms.

[1952] In the proposal, the Commission noted that individuals who are not sole proprietors (*i.e.,* employees of municipal advisors) and must register on Form MA–I do 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). *See also* Proposal, 76 FR 879. As discussed in this release, such individuals will no longer be required to register as a municipal advisor.

[1953] *See* Proposal, 76 FR 879.

[1954] *See* Rule 15Ba1–8.

[1955] *See, e.g.,* Ranson Financial Consultants Letter; Joy Howard WM Financial Strategies Letter; NAIPFA Letter I; Specialized Public Finance Letter.

[1956] *See* Rule 15Ba1–2(b)(1).

[1957] *See* Rule 15Ba1–2(c).

[1958] *See* Proposal, 76 FR 880 n. 426 and accompanying text.

[1959] *See id.* at 880 n. 427 and accompanying text.

[1960] *See supra* notes 1483–1485 and accompanying text.

[1961] *See supra* notes 1496–1498 and accompanying text.

[1962] 3.5 hours (estimated hourly burden for one municipal advisor to complete a Form MA) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $581. This estimate is lower than the estimate in the Proposal due to the Commission's decision not to adopt a self-certification requirement and a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1963] 3.0 hours (estimated time required to complete Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $498. This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

including the size of the municipal advisory firm; the complexity of its business activities; the amount and type of information to be included on Form MA and Form MA–I; and the number of natural persons municipal advisors for whom the municipal advisory firm will need to submit Form MA–I. The Commission estimates that the average initial registration burden across all firms will be approximately $7,595 per applicant.[1964]

The Commission notes that the estimated $166 hourly rate for compliance personnel that the Commission uses to estimate calculations with respect to certain figures [1965] will be less likely to apply to small entities and solo practitioners because they will be less likely than larger firms to employ highly compensated compliance professionals. In the case of such entities, the Commission's per-applicant cost estimates represent the upper range of potential registration costs, and the Commission expects that the actual registration costs for small entities will be significantly lower.

In addition, municipal advisors will use Form MA and Form MA–I to amend information previously reported to the Commission.[1966] Under Rule 15Ba1–5 and the General Instructions, a registered municipal advisor must amend Form MA at least annually and whenever a material event has occurred that changes the information provided in the form.[1967] As a result of certain changes to the final rule, a registered municipal advisor must also promptly amend the information contained in Form MA–I by filing an amended Form MA–I whenever the information contained in the form becomes inaccurate for any reason.[1968] Municipal advisors will also need to submit an amendment to Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory activities on its behalf.[1969]

In the Proposal, the Commission estimated that the average ongoing annual cost per applicant to amend Form MA and complete a self-certification would be approximately $510,[1970] and the average ongoing annual cost per applicant to amend Form MA–I and complete a self-certification would be approximately $160.[1971] The Commission received one comment letter that addressed the Commission's burden estimates for amendments to Form MA and Form MA–I.[1972] The Commission now estimates that the average annual PRA cost per registered municipal advisor to amend Form MA will be approximately $332.[1973] The Commission also now estimates that the average annual PRA cost per registered municipal advisor to prepare updating amendments to Form MA–I for each of its natural person municipal advisors will be approximately $141,[1974] and that the average PRA cost per registered municipal advisor to amend Form MA–I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory activities on its behalf will be approximately $83.[1975]

Municipal advisors will also file a notice of withdrawal from registration as a municipal advisor on Form MA–W.[1976] In the Proposal, the Commission estimated that the average cost per registrant to complete Form MA–W would be approximately $85.[1977] The Commission now estimates that the average PRA cost per registered municipal advisor to complete Form MA–W will be approximately $83.[1978]

Non-resident municipal advisors will incur costs to complete Form MA–NR and provide an opinion of counsel. In the Proposal, the Commission estimated that the average cost per filer to complete Form MA–NR would be approximately $255 [1979] and that the average 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.[1980] The Commission now estimates the average PRA cost to complete a single Form MA–NR will be approximately $249.[1981] The Commission also estimates that the average PRA cost per non-resident municipal advisor to obtain an opinion of counsel, including the cost to hire outside counsel, will be approximately $2,037.[1982]

The Commission also believes that some municipal advisory firms will incur costs associated with hiring outside counsel to help them comply with the requirements of the final rules and to complete Form MA. In the Proposal, the Commission estimated that the average cost per municipal advisory firm to hire outside counsel would be approximately $400.[1983] The Commission continues to estimate that the average cost per municipal advisory firm to hire outside counsel will be approximately $400.[1984]

[1964] *See supra* note 1813.

[1965] *See supra* note 1812 (calculating the combined hourly rate).

[1966] *See* Rule 15Ba1–5.

[1967] Municipal advisors will also report successions of registration on Form MA. *See* Rule 15Ba1–6.

[1968] *See* Rule 15Ba1–5(b).

[1969] *See* Instructions to Form MA–I.

[1970] *See* Proposal, 76 FR 880 n. 428 and accompanying text.

[1971] *See id.* at 880 n. 429 and accompanying text.

[1972] *See supra* notes 1523–1524 and accompanying text.

[1973] ((1.5 hours (average estimated time to prepare an annual amendment to Form MA) × 1.0 hours (number of annual amendments per year)) + (0.5 hours (average estimated time to prepare an interim updating amendment to Form MA) × 1.0 (number of interim updating amendments per year))) x $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $332. This estimate is lower than the estimate in the Proposal due to the Commission's decision not to adopt a self-certification requirement and a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1974] (0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) × 1.7 hours (average number of amendments per year)) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $141.10. This estimate is lower than the estimate in the Proposal because natural person municipal advisors are not required to complete a self-certification under the final rules and the combined hourly rate for a Compliance Manager and Compliance Clerk has been reduced from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1975] 0.5 hours (average estimated time to prepare an updating amendment to Form MA–I) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $83. *See supra* note 1812 (calculating the combined hourly rate).

[1976] *See* Rule 15Ba1–4.

[1977] *See* Proposal, 76 FR 880 n. 430 and accompanying text.

[1978] 0.5 hours (average estimated time to complete Form MA–W) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $83. This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1979] *See* Proposal, 76 FR 880 n. 431 and accompanying text.

[1980] *See id.* at 880 n. 432 and accompanying text.

[1981] 1.5 hours (average estimated time to complete Form MA–NR) × $166 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $249. This estimate is lower than the estimate in the Proposal due to a reduction in the combined hourly rate for a Compliance Manager and Compliance Clerk from $170 to $166. *See supra* note 1812 (calculating the combined hourly rate).

[1982] 3.0 hours (average estimated time to obtain an opinion of counsel) × $379 (hourly rate for an internal attorney) = $1,137. *See supra* note 1779 (calculating the hourly rate for an in-house attorney). $900 = average estimated cost to hire outside counsel to provide opinion of counsel. $1,137 + $900 = $2,037. This estimate is higher than the estimate in the Proposal due to an increase in the hourly rate for an internal attorney from $354 to $379. *See supra* note 1538 (explaining the outside counsel cost estimate).

[1983] *See* Proposal, 76 FR 880 n. 433 and accompanying text.

[1984] 1.0 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × $400 (hourly rate for an outside attorney) = $400. *See supra* note 1538 (explaining the outside counsel cost estimate).

Rule 15Ba1–8 will require all registered municipal advisors to maintain true, accurate, and current books and records relating to their municipal advisory activities. Generally, Rule 15Ba1–8 will 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. In the Proposal, the Commission estimated that the average cost per municipal advisory firm to comply with the proposed recordkeeping requirement would be approximately $9,050.[1985]

The Commission estimates that, on average, the annual hourly burden for each municipal advisory firm to comply with the recordkeeping requirements will be 182 hours.[1986] Thus, the Commission estimates that the average PRA cost per municipal advisory firm to comply with the recordkeeping requirements will be approximately $9,646 each year.[1987] In addition, the Commission continues to believe that it is appropriate to assume that, for small firms, the per-hour costs attributable to the recordkeeping requirements will be, at most, equivalent to the hourly rate for a General Clerk.[1988] Thus, the Commission estimates that the average PRA cost per small entity municipal advisory firm to comply with the recordkeeping requirements will be approximately $9,646 each year.[1989] The Commission believes that for many small entity municipal advisory firms the actual cost will likely be lower for a number of reasons, including differences in the variety of services offered to municipal entities and the number of municipal entity clients, but is using a conservative estimate of such costs.

As discussed above, one commenter asserted that the Commission used an hourly rate for the books and records estimate that was too low for small entity municipal advisors since they often do not employ General Clerks.[1990] While the Commission acknowledges that small municipal advisors do not typically employ General Clerks and that, in many cases, the municipal advisory professional himself may be responsible for maintaining the books and records of the firm, the Commission does not agree that it should use a higher hourly rate to estimate the recordkeeping burden for small municipal advisors for several reasons. The 182-hour estimate is an average annual hourly burden across all firms regardless of their size, and is based on the Commission's experience with other regulatory regimes. The Commission anticipates that larger municipal advisory firms that offer a variety of services to municipal entities and have significantly greater volumes of books and records will incur an annual burden greater than 182 hours, while smaller municipal advisory firms that have significantly lower volumes of books and records will incur an annual burden lower than 182 hours. Similarly, the $53 figure is an average hourly rate across all firms regardless of their size and is inclusive of the variability of costs across municipal advisors. The Commission does not have the information necessary to provide reasonable estimates of the differences in hourly burden among firms of various sizes, a separate average hourly burden for small entity municipal advisors, or the differences in hourly rates among firms of various sizes. The Commission is also unaware of any such data being publicly available. The Commission staff also understands that some small municipal advisors employ part-time staff to perform certain business and clerical functions and that the costs of such employees are less likely to reflect the costs for compliance personnel at larger municipal advisory firms or the hourly rate suggested by the commenter. The Commission assumes that municipal advisors will use the most cost-effective approach available, depending on their size and specific circumstances, to comply with the recordkeeping requirement. Accordingly, the Commission does not believe that it should use a higher hourly rate to estimate the recordkeeping burden for small municipal advisors.

Further, as stated above, the Commission believes that small municipal advisory firms will likely incur lower annual costs for maintaining books and records than larger firms. The Commission recognizes that, although small municipal advisory firms and solo practitioners may maintain their books and records without a general clerk or additional staff assistance, such activity would not be costless. The Commission believes that it is appropriate to assume that, because small firms will utilize the most cost-effective approach available, per-hour costs attributable to the books and records requirements will be, at most, equivalent to the hourly rate for a General Clerk. Therefore, the Commission uses the hourly rate for a General Clerk to estimate the average cost across all municipal advisory firms, regardless of size.

The Commission recognizes that such compliance burdens and expenses may cause some smaller municipal advisory firms and sole proprietors to exit the market or consolidate with other municipal advisory firms. The Commission estimates that, at the upper range of annual costs, a small entity municipal advisory firm will incur approximately $17,241 in PRA costs during the first year[1991] and $11,721 each subsequent year to maintain its registration and books and records.[1992] The Commission estimates that sole proprietors will incur a lower PRA cost of approximately $11,125 during the first year[1993] and $10,119 each subsequent year.[1994]

One sole proprietor has asserted that his annual revenue during the past two years has not exceeded $350,000,[1995] while another commenter estimated that the median annual revenue for a four-person municipal advisory firm was $800,000.[1996] Such comments indicate that registration costs could comprise approximately 2% of a sole proprietor's[1997] or a four-person

[1985] *See* Proposal, 76 FR 88 n. 434 and accompanying text.

[1986] *See supra* Section VII.D.8.

[1987] 182 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) × $53 (hourly rate for a General Clerk) = $9,646. *See supra* note 1861 (calculating the hourly rate for a General Clerk). This estimate is higher than in the Proposal because of an increase in the hourly rate for a General Clerk from $50 per hour to $53 per hour.

[1988] *See supra* note 1861 (calculating the hourly rate for a General Clerk).

[1989] *See supra* note 1987 and accompanying text.

[1990] *See* Joy Howard WM Financial Strategies Letter. *See also supra* text accompanying note 1867.

[1991] $7,595 (estimated average initial registration burden for a single municipal advisory firm) + $9,646 (estimated cost to maintain books and records) = $17,241. *See supra* note 1813 (calculating the estimated average initial registration burden for a single municipal advisory firm).

[1992] $332 (estimated annual cost for one municipal advisor to amend Form MA) + ((11,250 (estimated number of individuals for whom municipal advisory firms will need to complete a Form MA–I) ÷ 910 (estimated number of municipal advisors registered on Form MA)) × $141 (estimated annual cost to complete updating amendments to Form MA–I for each natural person municipal advisor)) + $9,646 (estimated cost to maintain books and records) = $11,721.13.

[1993] $581 (estimated initial cost for one municipal advisor to complete a Form MA) + (1.0 (sole proprietor required to complete a Form MA–I) × $498 (estimated initial cost to complete a Form MA–I)) + $400 (estimated cost to hire outside counsel) + $9,646 (estimated cost to maintain books and records) = $11,125.

[1994] $332 (estimated annual cost for one municipal advisor to amend Form MA) + (1.0 (sole proprietor required to complete a Form MA–I) × $141 (estimated annual cost to complete updating amendments to Form MA–I for each natural person municipal advisor)) + $9,646 (estimated cost to maintain books and records) = $10,119.

[1995] *See supra* note 1934 and accompanying text.

[1996] *See supra* note 1932 and accompanying text.

[1997] $6,877 (estimated registration cost for a sole proprietor during the first year) ÷ $350,000

municipal advisory firm's [1998] annual revenue. Nevertheless, the Commission acknowledges that some small firms and sole proprietors will not consider the annual cost to be trivial and may discontinue providing municipal advisory services or consolidate with other municipal advisory firms as a result. The requirements under the final rules and forms were designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act.

E. Agency Action to Minimize Effects on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small advisors.[1999] In considering whether to adopt the final rules and forms, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipal advisors; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small advisors; (iii) the use of performance rather than design standards; [2000] and (iv) an exemption from coverage of the rules, or any part thereof, for such small advisors.

The Commission received several comments recommending that the Commission create exemptions for small independent advisors.[2001] Two commenters suggested exempting from registration municipal advisors involved in transactions below a debt financing limit.[2002]

The Commission does not believe differing compliance or reporting requirements or an exemption from coverage of the final rules and forms, or any part thereof, for small municipal advisors (*i.e.,* the first and fourth alternatives) would be appropriate or consistent with investor protection or with the Commission's understanding of Congress's intent to have the Commission register municipal advisors and oversee their activities. Because the Commission believes the protections of Section 15B of the Exchange Act, as amended by Section 975 of the Dodd-Frank Act, are intended to apply equally to clients of both large and small municipal advisory firms, the Commission believes it would be inconsistent with the purposes of the Exchange Act to specify different requirements for small municipal advisors under the final rules and forms. In addition, the requirements under the final rules and forms are designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act.

As discussed above, the Commission believes that the requirement that municipal advisors register with the Commission on Form MA and update the information provided at least annually (or more often as required by the rules) will provide a number of benefits.[2003] For example, the final rules and forms should allow municipal entities and obligated persons to become better informed about municipal advisors at a lower cost, which could increase the use of municipal advisors. In addition, the permanent registration regime and recordkeeping requirements should enhance the ability of Commission and other securities regulators to oversee municipal advisors and monitor compliance with the requirements of the Exchange Act and MSRB rules. The Commission believes that requiring less information about small municipal advisors would be insufficient for these purposes.

Regarding the second alternative, the Commission does not believe it is necessary to clarify, consolidate, or simplify the registration or recordkeeping requirements for small municipal advisors. In developing the 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 forms and the submission requirements are simple and straightforward, and that they take into account the resources available to all municipal advisors, including small municipal advisors. The Commission believes that small advisors will incur less cost to complete Form MA than larger municipal advisory firms with more complex businesses because certain disclosures, for example disclosures related to Item 6 and the number of DRPs required, will be less complicated and require less time to complete.

One commenter suggested the Commission allow small municipal advisors to convert their temporary registration to permanent status by agreeing to observe a fiduciary duty to clients and filing Form ADV (Part 1) with FINRA.[2004] The Commission acknowledges that this approach would expedite the registration process for those municipal advisors that currently file Form ADV, but also notes that this approach would result in a registration process with multiple formats that may become difficult to track over time. In addition, the information required to be disclosed on Form ADV would not provide comparable information about municipal advisory activities. The Commission continues to believe that the collection of information in a uniform, standardized format from all municipal advisors will facilitate consistent public disclosure of municipal advisor registration information to municipal advisors, municipal entities, obligated persons, the Commission, and other interested persons.

Another commenter recommended small firms be allowed to pay lower registration fees to the MSRB.[2005] As discussed above,[2006] the Commission does not charge municipal advisors a fee to register with the Commission. Although the Dodd-Frank Act permits the MSRB to require municipal advisors to pay such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the MSRB,[2007] the Commission does not set or approve fees charged by the MSRB. Instead, the Exchange Act provides that certain designated SRO rules, including fees charged by the MSRB, take effect upon filing with the Commission [2008] and may thereafter be enforced by the SRO to the extent not inconsistent with the Exchange Act, the rules and regulations thereunder, and applicable

(estimated annual revenue for a sole proprietor) = 1.96%.

[1998] $16,598 (estimated registration cost for a municipal advisor registered with the Commission as an investment adviser and/or broker-dealer during the first year) ÷ $800,000 (estimated annual revenue for a four-person municipal advisory firm) = 2.07%.

[1999] *See* 5 U.S.C. 603(c).

[2000] The Commission does not consider using performance rather than design standards to be consistent with the Commission's understanding of Congress's intent to have the Commission register municipal advisors and oversee their activities or with other registration regimes under Commission rules.

[2001] *See, e.g.,* Bradley Payne Letter; Chancellor Financial Associates Letter; Ranson Financial Associates Letter; Specialized Public Finance Letter; Sullivan Letter; Tamalpais Advisors Letter.

[2002] *See* Chancellor Financial Associates Letter (suggesting ''a limit predicated on the Internal Revenue Code's $10 million limit (during a calendar year) in order for an issuer's bonds to be bank-qualified''); Ranson Financial Associates Letter (suggesting ''that if a debt financing does not exceed a certain size or is of a certain nature, that a firm would not have to register'').

[2003] *See supra* Section VIII.D.3.b.

[2004] *See* Specialized Public Finance Letter.

[2005] *See* Sullivan Letter.

[2006] *See supra* note 1808.

[2007] *See* 15 U.S.C. 78*o*-4(b)(2)(J).

[2008] *See* 15 U.S.C. 78s(b)(3)(A).

Federal and State law.[2009] The Commission notes, however, that the MSRB is required to consider the effects of its rules on small municipal advisors.[2010]

One commenter suggested that the Commission could provide meaningful relief by waiving small firms from the requirement to provide audited financial reports.[2011] The Commission notes that the final rules and forms do not require audited or other financial reports as part of the recordkeeping requirement. The preparation of audited financial reports is at the discretion of the municipal advisor, and the Commission expects that municipal advisors will generally utilize the most cost-effective solution to comply with the requirements of the permanent registration regime.

X. Statutory Basis and Text of Amendments

Pursuant to the Exchange Act, and particularly Sections 15B, 17, and 36 (15 U.S.C. 78*o*-4, 78q, and 78mm, respectively), the Commission is adopting § 200.19d, § 200.30–3a, §§ 240.15Ba1–1 through 240.15Ba1–8, § 240.15Bc4–1, and §§ 249.1300 through 249.1330 (Form MA, Form MA–I, Form MA–W, and Form MA–NR), and the Commission is amending §§ 200.19c and 200.30–18.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Municipal advisors, Registration requirements.

Text of Rules and Forms

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The general authority citation for part 200, subpart A, is revised to read as follows:

Authority: 15 U.S.C. 77*o*, 77s, 77sss, 78d, 78d-1, 78d-2, 78*o*-4, 78w, 78*ll*(d), 78mm, 80a-37, 80b-11, 7202, and 7211 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Section 200.19c is revised to read as follows:

§ 200.19c Director of the Office of Compliance Inspections and Examinations.

The Director of the Office of Compliance Inspections and Examinations (''OCIE'') is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information processors, the Municipal Securities Rulemaking Board, brokers and dealers, municipal securities dealers, municipal advisors, transfer agents, investment companies, and investment advisers, under Sections 15B, 15C(d)(1) and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4, 78*o*-5(d)(1) and 78q(b)), Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(b)), and Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4).

■ 3. Section 200.19d is added to read as follows:

§ 200.19d Director of the Office of Municipal Securities.

The Director of the Office of Municipal Securities is responsible to the Commission for the administration and execution of the Commission's programs under the Securities Exchange Act of 1934 relating to the registration and regulation of municipal advisors. The functions involved in the regulation of such entities include recommending the adoption and amendment of Commission rules, and responding to interpretive and no-action requests.

■ 4. Section 200.30–3a is added to read as follows:

§ 200.30–3a Delegation of authority to Director of the Office of Municipal Securities.

Pursuant to the provisions of Pub. L. 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Office of Municipal Securities to be performed by him or under his direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) Pursuant to section 15B of the Act (15 U.S.C. 78*o*-4):

(i) To authorize the issuance of orders granting registration of municipal advisors within 45 days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents); and

(ii) To authorize the issuance of orders canceling the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor.

(b) Notwithstanding anything in the foregoing, in any case in which the Director of the Office of Municipal Securities believes it appropriate, he may submit the matter to the Commission.

■ 5. Section 200.30–18 is amended by adding paragraphs (j)(7) and (j)(8) to read as follows:

§ 200.30–18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

* * * * *

(j) * * *

(j) * * *

(7) Under section 15B(a) of the Act (15 U.S.C. 78*o*-4(a)):

(i) To authorize the issuance of orders granting registration of municipal advisors within 45 days of the filing of an application for registration as a municipal advisor (or within such longer period as to which the applicant consents); and

(ii) To grant registration of municipal advisors sooner than 45 days after the filing of an application for registration.

(8) Under section 15B(c) of the Act (15 U.S.C. 78*o*-4(c)):

(i) To authorize the issuance of orders canceling the registration of a municipal advisor, if such municipal advisor is no longer in existence or has ceased to do business as a municipal advisor; and

[2009] *See* 15 U.S.C. 78s(b)(3)(C). The Commission has sixty days from the date of filing, however, during which it ''summarily may temporarily suspend'' the fees ''if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act. *See id.* If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. *See id.* In addition, Section 19(c) of the Exchange Act authorizes the Commission, by rule, to abrogate, add to, and delete from the rules of an SRO (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the SRO, to conform its rules to requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78s(c).

[2010] *See* 15 U.S.C. 78*o*-4(b)(2)(L)(iv) (providing that an MSRB rule may ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud'').

[2011] *See* Tamalpais Advisors Letter.

(ii) To determine whether notices of withdrawal from registration on Form MA–W shall become effective sooner than the 60-day waiting period.

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

■ 6. The general authority citation for part 240 is revised, and sectional authorities for §§ 240.15Ba1–1 through 240.15Ba1–8 and § 240.15Bc4–1 are added, 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, 78*l,* 78m, 78n, 78n-1, 78*o,* 78*o*-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78*ll,* 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.

* * * * *

Sections 240.15Ba1–1 through 240.15Ba1–8 are also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010).

Section 240.15Bc4–1 is also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010).

* * * * *

■ 7. Sections 240.15Ba1–1 through 240.15Ba1–8 are added to read as follows:

SEC.

* * * * *

§ 240.15Ba1–1 Definitions.
§ 240.15Ba1–2 Registration of municipal advisors and information regarding certain natural persons.
§ 240.15Ba1–3 Exemption of certain natural persons from registration under section 15B(a)(1)(B) of the Act.
§ 240.15Ba1–4 Withdrawal from municipal advisor registration.
§ 240.15Ba1–5 Amendments to Form MA and Form MA–I.
§ 240.15Ba1–6 Consent to service of process to be filed by non-resident municipal advisors; legal opinion to be provided by non-resident municipal advisors.
§ 240.15Ba1–7 Registration of successor to municipal advisor.
§ 240.15Ba1–8 Books and records to be made and maintained by municipal advisors.

§ 240.15Ba1–1 Definitions.

As used in the rules and regulations prescribed by the Commission pursuant to section 15B of the Act (15 U.S.C. 78*o*-4) in §§ 240.15Ba1–1 through 240.15Ba1–8 and 240.15Bc4–1:

(a) *Guaranteed investment contract* has the same meaning as in section 15B(e)(2) of the Act (15 U.S.C. 78*o*-4(e)(2)); *provided, however,* that the contract relates to investments of proceeds of municipal securities or municipal escrow investments.

(b) *Investment strategies* has the same meaning as in section 15B(e)(3) of the Act (15 U.S.C. 78*o*-4(e)(3)), and includes plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.

(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.*

(i) *In general.* Except as otherwise provided in paragraphs (d)(2) and (d)(3) of this section, the term *municipal advisor* has the same meaning as in section 15B(e)(4) of the Act (15 U.S.C. 78*o*-4(e)(4)). Under section 15B(e)(4)(A) of the Act (15 U.S.C. 78*o*-4(e)(4)(A)), the term *municipal advisor* means a person (who is not a municipal entity or an employee of a municipal entity) that 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, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or undertakes a solicitation of a municipal entity or an obligated person. Under section 15B(e)(4)(C) of the Act (15 U.S.C. 78*o*-4(e)(4)(C)) and paragraph (d)(2) of this section, a *municipal advisor* does not include a person that engages in specified excluded activities.

(ii) *Advice standard.* For purposes of the municipal advisor definition under paragraph (d)(1)(i) of this section, advice excludes, among other things, the provision of general information that does not involve a recommendation regarding municipal financial products or the issuance of municipal securities (including with respect to the structure, timing, terms and other similar matters concerning such financial products or issues).

(iii) *Certain types of municipal advisors.* Under section 15B(e)(4)(B) of the Act (15 U.S.C. 78*o*-4(e)(4)(B)), *municipal advisors* include, without limitation, financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, to the extent that such persons otherwise meet the requirements of the municipal advisor definition in this paragraph (d)(1).

(2) *Exclusions from municipal advisor definition.* Pursuant to section 15B(e)(4)(C) of the Act (15 U.S.C. 78*o*-4(e)(4)(C)), the term *municipal advisor* excludes the following persons with respect to the specified excluded activities:

(i) *Serving as an underwriter.* A broker, dealer, or municipal securities dealer serving as an underwriter of a particular issuance of municipal securities to the extent that the broker, dealer, or municipal securities dealer engages in activities that are within the scope of an underwriting of such issuance of municipal securities.

(ii) *Registered investment advisers—In general.* Any investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) or any person associated with such registered investment adviser to the extent that such registered investment adviser or such person is providing investment advice in such capacity. Solely for purposes of this paragraph (d)(2)(ii), investment advice does not include advice concerning whether and how to issue municipal securities, advice concerning the structure, timing, and terms of an issuance of municipal securities and other similar matters, advice concerning municipal derivatives, or a solicitation of a municipal entity or obligated person.

(iii) *Registered commodity trading advisors.* Any commodity trading advisor registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or person associated with a registered commodity trading advisor, to the extent that such registered commodity trading advisor or such person is providing advice that is 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 Act (15 U.S.C. 78c(a)(69)), and any rules and regulations thereunder).

(iv) *Attorneys.* Any attorney to the extent that the attorney is offering legal advice or providing services that are of a traditional legal nature with respect to the issuance of municipal securities or municipal financial products to a client of such attorney that is a municipal entity, obligated person, or other participant in the transaction. To the extent an attorney represents himself or herself as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, however, the attorney is not excluded with respect to such financial activities under this paragraph (d)(2)(iv).

(v) *Engineers.* Any engineer to the extent that the engineer is providing engineering advice.

(3) *Exemptions from municipal advisor definition.* The Commission exempts the following persons from the definition of municipal advisor to the

extent they are engaging in the specified activities:

(i) *Accountants.* Any accountant to the extent that the accountant is providing audit or other attest services, preparing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.

(ii) *Public officials and employees.* (A) Any person serving as a member of a governing body, an advisory board, or a committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity.

(B) Any employee of a municipal entity or obligated person to the extent that such person is acting within the scope of such person's employment.

(iii) *Banks.* Any bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), to the extent the bank provides advice with respect to the following:

(A) Any investments that are held in a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(B) Any extension of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account;

(C) Any funds held in a sweep account that meets the requirements of section 3(a)(4)(B)(v) of the Act (15 U.S.C. 78c(a)(4)(B)(v)); or

(D) Any investment made by a bank acting in the capacity of an indenture trustee or similar capacity.

(iv) *Responses to requests for proposals or qualifications.* Any person providing a response in writing or orally to a request for proposals or qualifications from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities; *provided, however,* that such person does not receive separate direct or indirect compensation for advice provided as part of such response.

(v) *Swap dealers.*

(A) A swap dealer (as defined in Section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)) and the rules and regulations thereunder) registered under the Commodity Exchange Act or associated person of the swap dealer recommending a municipal derivative or a trading strategy that involves a municipal derivative, so long as the registered swap dealer or associated person is not *acting as an advisor* to the municipal entity or obligated person with respect to the municipal derivative or trading strategy pursuant to Section 4s(h)(4) of the Commodity Exchange Act and the rules and regulations thereunder.

(B) For purposes of determining whether a swap dealer is *acting as an advisor* in this paragraph (d)(3)(v), the municipal entity or obligated person involved in the transaction will be treated as a *special entity* under Section 4s(h)(2) of the Commodity Exchange Act and the rules and regulations thereunder (even if such municipal entity or obligated person does not satisfy the definition of *special entity* under those provisions).

(vi) *Participation by an independent registered municipal advisor.* Any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities, provided that the following requirements are met:

(A) *Independent registered municipal advisor.* An independent registered municipal advisor is providing advice with respect to the same aspects of the municipal financial product or issuance of municipal securities. For purposes of this paragraph (d)(3)(vi), the term *independent registered municipal advisor* means a municipal advisor registered pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) and the rules and regulations thereunder and that is not, and within at least the past two years was not, associated (as defined in section 15B(e)(7) (15 U.S.C. 78*o*–4(e)(7)) of the Act) with the person seeking to rely on this paragraph (d)(3)(vi).

(B) *Required representation.* A person seeking to rely on this paragraph (d)(3)(vi) receives from the municipal entity or obligated person a representation in writing that it is represented by, and will rely on the advice of, an independent registered municipal advisor, provided that the person receiving such representation has a reasonable basis for relying on the representation.

(C) *Required disclosures.*

(*1*) With respect to a municipal entity, such person discloses in writing to the municipal entity that, by obtaining such representation from the municipal entity, such person is not a municipal advisor and is not subject to the fiduciary duty set forth in section 15B(c)(1) of the Act (15 U.S.C. 78*o*–4(c)(1)) with respect to the municipal financial product or issuance of municipal securities, and provides a copy of such disclosure to the independent registered municipal advisor.

(*2*) With respect to an obligated person, such person discloses in writing to the obligated person that, by obtaining such representation from the obligated person, such person is not a municipal advisor with respect to the municipal financial product or issuance of municipal securities, and provides a copy of such disclosure to the independent registered municipal advisor.

(*3*) Each such disclosure must be made at a time and in a manner reasonably designed to allow the municipal entity or obligated person to assess the material incentives and conflicts of interest that such person may have in connection with the municipal advisory activities.

(vii) *Persons that provide advice on certain investment strategies.* A person that provides advice with respect to investment strategies that are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

(viii) *Certain solicitations.* A person that undertakes a solicitation of a municipal entity or obligated person for the purpose of obtaining or retaining an engagement by a municipal entity or by an obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products that are investment strategies to the extent that those investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

(4) *Special rule for separately identifiable departments or divisions of banks for municipal advisory purposes.* If a bank engages in municipal advisory activities through a separately identifiable department or division that meets the requirements of this paragraph (d)(4), the determination of whether those municipal advisory activities cause any person to be a municipal advisor may be made separately for such department or division. In such event, that department or division, rather than the bank itself, shall be deemed to be the municipal advisor.

(i) *Separately identifiable department or division.* For purposes of this paragraph (d)(4), a *separately identifiable department or division* of a bank is that unit of the bank which conducts all of the municipal advisory activities of the bank, provided that the following requirements are met:

(A) *Supervision.* 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.

(B) *Separate records.* All of the records relating to the bank's municipal advisory activities are separately maintained in, or extractable from, such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder, and the rules of the Municipal Securities Rulemaking Board relating to municipal advisors.

(ii) [Reserved]

(e) *Municipal advisory activities* means the following activities specified in section 15B(e)(4)(A) of the Act (15 U.S.C. 78*o*–4(e)(4)(A)) and paragraph (d)(1) of this section that, absent the availability of an exclusion under paragraph (d)(2) of this section or an exemption under paragraph (d)(3) of this section, would cause a person to be a municipal advisor:

(1) Providing 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

(2) Solicitation of a municipal entity or an 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 Act (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 Act (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which:

(1) A municipal entity is a counterparty; or

(2) An obligated person, acting in such capacity, is a counterparty.

(g) *Municipal entity* means any State, political subdivision of a State, or municipal corporate instrumentality of a State or of a political subdivision of a State, including:

(1) Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

(2) 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

(3) Any other issuer of municipal securities.

(h) *Municipal escrow investments.*

(1) *In general.* Except as otherwise provided in paragraph (h)(2) of this section, *municipal escrow investments* means proceeds of municipal securities and any other funds of a municipal entity that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

(2) *Reasonable reliance on representations.* In determining whether or not funds to be invested or reinvested constitute municipal escrow investments for purposes of this section, a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested or reinvested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.

(i) *Municipal financial product* has the same meaning as in section 15B(e)(5) of the Act (15 U.S.C. 78*o*–4(e)(5)).

(j) *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 subject to the jurisdiction of 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 subject to the jurisdiction of the United States; or

(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 subject to the jurisdiction of the United States.

(k) *Obligated person* has the same meaning as in section 15B(e)(10) of the Act (15 U.S.C. 78*o*–4(e)(10)); *provided, however,* that the term *obligated person* shall not include:

(1) A person who provides municipal bond insurance, letters of credit, or other liquidity facilities;

(2) A person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or

(3) The federal government.

(l) *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.

(m)(1) *Proceeds of municipal securities—In general.* Except as otherwise provided in paragraphs (m)(2) and (m)(3) of this section, *proceeds of municipal securities* means monies derived by a municipal entity from the sale of municipal securities, investment income derived from the investment or reinvestment of such monies, and any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds, and pledged funds created for such purpose, and the investment income derived from the investment or reinvestment of monies in such funds. When such monies are spent to carry out the authorized purposes of municipal securities, they cease to be proceeds of municipal securities.

(2) *Exception for Section 529 college savings plans.* Solely for purposes of this paragraph (m), monies derived from a municipal security issued by an education trust established by a State under Section 529(b) of the Internal Revenue Code (26 U.S.C. 529(b)) are not proceeds of municipal securities.

(3) *Reasonable reliance on representations.* In determining whether or not funds to be invested constitute proceeds of municipal securities for purposes of this section, a person may rely on representations in writing made by a knowledgeable official of the municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.

(n) *Solicitation of a municipal entity or obligated person* has the same meaning as in section 15B(e)(9) of the Act (15 U.S.C. 78*o*–4(e)(9)); *provided, however,* that a solicitation does not include:

(1) Advertising by a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser; or

(2) Solicitation of an obligated person, if such obligated person is not acting in the capacity of an obligated person or the solicitation of the obligated person is not in connection with the issuance of municipal securities or with respect to municipal financial products.

§ 240.15Ba1–2 Registration of municipal advisors and information regarding certain natural persons.

(a) *Form MA.* A person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA (17 CFR 249.1300) in accordance with the instructions in the Form and file the Form electronically with the Commission.

(b) *Form MA–I.* (1) A person applying for registration or registered with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4) must complete Form MA–I (17 CFR 249.1310) with respect to each natural person who is a person associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf in accordance with the instructions in the Form and file the Form electronically with the Commission.

(2) A natural person applying for registration with the Commission as a municipal advisor pursuant to section 15B of the Act (15 U.S.C. 78*o*–4), in addition to completing and filing Form MA pursuant to paragraph (a) of this section, must complete Form MA–I (17 CFR 249.1310) in accordance with the instructions in the Form and file the Form electronically with the Commission.

(c) *When filed.* Each Form MA (17 CFR 249.1300) shall be considered filed with the Commission upon submission of a completed Form MA, together with all additional required documents, including all required filings of Form MA–I (17 CFR 249.1310), to the Commission's Electronic Data Gathering, Analysis, and Retrieval system.

(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 Act (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

§ 240.15Ba1–3 Exemption of certain natural persons from registration under section 15B(a)(1)(B) of the Act.

A natural person municipal advisor shall be exempt from section 15B(a)(1)(B) of the Act (15 U.S.C. 78*o*–4(a)(1)(B)) if he or she:

(a) Is an associated person of an advisor that is registered with the Commission pursuant to section 15B(a)(2) of the Act (15 U.S.C. 78*o*–4(a)(2)) and the rules and regulations thereunder; and

(b) Engages in municipal advisory activities solely on behalf of a registered municipal advisor.

§ 240.15Ba1–4 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 the 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 Act (15 U.S.C. 78*o*–4(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, the 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 Act (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

§ 240.15Ba1–5 Amendments to Form MA and Form MA–I.

(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 a sole proprietor; and

(2) More frequently, if required by the General Instructions (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 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 Act (15 U.S.C. 78*o*–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

§ 240.15Ba1–6 Consent to service of process to be filed by non-resident municipal advisors; legal opinion to be provided by non-resident municipal advisors.

(a)(1) Each non-resident municipal advisor applying for registration pursuant to section 15B(a) of the Act (15 U.S.C. 78*o*–4(a)) shall, at the time of filing of the municipal advisor's application on Form MA (17 CFR 249.1300), file with 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 to enforce this chapter.

(2) Each municipal advisor applying for registration pursuant to or registered under section 15B of the Act (15 U.S.C. 78*o*–4) shall, at the time of filing the relevant Form MA (17 CFR 249.1300) or Form MA–I (17 CFR 249.1310), file with 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 municipal advisor's non-resident general partner or non-resident managing agent, or non-resident natural persons who are persons associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal

advisory activities on its behalf, to enforce this chapter.

(b) The registered municipal advisor shall communicate promptly to the Commission by filing a new Form MA–NR (17 CFR 249.1330) any change to the name or address of the agent for service of process of each such non-resident municipal advisor, general partner, managing agent, or natural persons who are persons associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf.

(c)(1) Each registered non-resident municipal advisor must promptly appoint a successor agent for service of process and file a new Form MA–NR (17 CFR 249.1330) if the non-resident municipal advisor 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.

(2) Each registered municipal advisor must require each of its non-resident general partners or non-resident managing agents, or non-resident natural persons who are persons associated with the municipal advisor (as defined in section 15B(e)(7) of the Act (15 U.S.C. 78*o*–4(e)(7))) and engaged in municipal advisory activities on its behalf, to promptly appoint a successor agent for service of process and the registered municipal advisor must file a new Form MA–NR (17 CFR 249.1330) if such non-resident general partner, managing agent, or associated person discharges the identified agent for service of process or if the agent for service of process is unwilling or unable to accept service on behalf such person.

(d) Each non-resident municipal advisor applying for registration pursuant to section 15B(a) of the Act (15 U.S.C. 78*o*–4(a)) 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 the municipal advisor as required by law and that the municipal advisor can, as a matter of law, submit to inspection and examination by the Commission.

(e) Form MA–NR (17 CFR 249.1330) must be filed electronically.

§ 240.15Ba1–7 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 Act (15 U.S.C. 78*o*–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 the 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 the 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.

§ 240.15Ba1–8 Books and records to be made and maintained by municipal advisors.

(a) Every person registered or required to be registered under section 15B of the Act (15 U.S.C. 78*o*-4) and the rules and regulations thereunder 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, general ledgers, 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:

(i) Are in effect; or

(ii) At any time within the last five years were in effect, not including those in effect prior to January 13, 2014;

(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, not including persons associated with the municipal advisor prior to January 13, 2014;

(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, not including those prior to January 13, 2014;

(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; and

(8) Written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such municipal advisor.

(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, excluding those that were only in effect prior to January 13, 2014, 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 in 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 staff 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 staff 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, rules of the Municipal Securities Rulemaking Board, or § 275.204–2 under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), 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 registered or applying for registration pursuant to section 15B of the Act (15 U.S.C. 78*o*-4) and the rules and regulations thereunder 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 that 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 Act.

(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, maintained, 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 calendar 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, maintain, 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 Act, 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, maintain, 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, maintaining, 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) and (2). 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 calendar 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, maintain, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, 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.

■ 8. Section 240.15Bc4–1 is added to read as follows:

§ 240.15Bc4–1 Persons associated with municipal advisors.

A person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal advisor, shall be subject to a

Commission order that censures or places limitations on the activities or functions of such person, or suspends for a period not exceeding twelve months or bars such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b) of the Act (15 U.S.C. 78*o*(b)(4)(A), 78*o*(b)(4)(D), 78*o*(b)(4)(E), 78*o*(b)(4)(H), 78*o*(b)(4)(G)), has been convicted of any offense specified in subparagraph (B) of such paragraph (4) (15 U.S.C. 78*o*(b)(4)(B)) within 10 years of the commencement of the proceedings under section 15B(c)(4) (15 U.S.C. 78*o*–4(c)(4)), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4) (15 U.S.C. 78*o*(b)(4)(C)). It shall be unlawful for any person as to whom an order entered pursuant to section 15B(c)(4) of the Act (15 U.S.C. 78*o*–4(c)(4)) or section 15B(c)(5) of the Act (15 U.S.C. 78*o*–4(c)(5)) suspending or barring him from being associated with a municipal advisor is in effect willfully to become, or to be, associated with a municipal advisor without the consent of the Commission, and it shall be unlawful for any municipal advisor to permit such a person to become, or remain, a person associated with it without the consent of the Commission, if such municipal advisor knew, or, in the exercise of reasonable care should have known, of such order.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The general authority citation for part 249 continues to read as follows:

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

* * * * *

■ 10. Subpart N is revised to read as follows:

Subpart N—Forms for Registration of Municipal Advisors and for Providing Information Regarding Certain Natural Persons

Sec.

249.1300 Form MA, for registration as a municipal advisor, and for amendments to registration.
249.1300T Form MA–T, for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration.
249.1310 Form MA–I, for providing information regarding natural person municipal advisors, and for amendments to such information.
249.1320 Form MA–W, for withdrawal from registration as a municipal advisor.
249.1330 Form MA–NR, for appointment of agent for service of process by non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, and non-resident natural person associated with a municipal advisor.

Subpart N—Forms for Registration of Municipal Advisors and for Providing Information Regarding Certain Natural Persons

§ 249.1300 Form MA, for registration as a municipal advisor, and for amendments to registration.

The form shall be used for registration as a municipal advisor pursuant to section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4) and for amendments to registrations.

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

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

§ 249.1310 Form MA–I, for providing information regarding natural person municipal advisors, and for amendments to such information.

The form shall be used for providing information regarding natural person municipal advisors, and for amendments to such information.

§ 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. 78*o*-4).

§ 249.1330 Form MA–NR, for appointment of agent for service of process by non-resident municipal advisor, non-resident general partner or managing agent of a municipal advisor, and non-resident natural person associated with a municipal advisor.

The form shall be used to furnish information pertaining to the appointment of agent for service of process by a non-resident municipal advisor and by registered municipal advisors to furnish the same for each of its non-resident general partner or managing agent, or non-resident natural person associated with a municipal advisor pursuant to section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4).

§ 249.1300T [Removed]

■ 11. Effective January 1, 2015, § 249.1300T is removed.

[**Note:** The following Forms will not appear in the Code of Federal Regulations.]

Instructions for the Form MA Series

Form MA: Application for Municipal Advisor Registration
Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities
Form MA-NR: Designation of U.S. Agent for Service of Process for Non-Residents
Form MA-W: Notice of Withdrawal from Registration as a Municipal Advisor

General Instructions

Read these General Instructions carefully before filing Form MA, Form MA-I, Form MA-NR, or Form MA-W. Specific instructions for certain items in Forms MA and MA-I, and General Instructions to Form MA-NR appear after these General Instructions. Failure to follow instructions or properly complete any of the forms may result in your registration being delayed or your application rejected.

Italicized terms are defined or described in the Glossary of Terms appended at the end of these instructions.

1. Where can an applicant obtain more information on Form MA, Form MA-I, Form MA-NR, Form MA-W, and electronic filing of these forms with the *SEC*?

The *Commission* provides information about its rules with respect to *municipal advisors* and the Securities Exchange Act of 1934, as well as the submission of these forms, on its website at: http://www.sec.gov/info/municipal.shtml. A comprehensive explanation of the requirements in these forms is provided in the release issued by the *Commission* on _____, 2013, in adopting the rules relating to *municipal advisor* registration, which can be viewed at http://www.sec.gov.

2. Who should file these forms?

a. Form MA

A partnership, corporation, trust, limited liability company, limited liability partnership, sole proprietorship, or other organized entity that engages in *municipal advisory activities* (*i.e.*, a *municipal advisory firm*) must register with the *Commission* on Form MA. The same form is also used to amend a previously submitted Form MA, and to file the required *annual update* described in General Instruction 8 below.

b. Form MA-I

A *municipal advisory firm* must complete and file Form MA-I with respect to each natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf, including *employees* of the firm. Independent contractors are included in the definition of "employee" for these purposes. The same form is also used to amend a previously submitted Form MA-I. A natural person doing business as a sole proprietor

must complete and file Form MA-I in addition to Form MA and must amend each form whenever applicable, as described below.

c. Form MA-NR

Every *municipal advisory firm* that is a *non-resident* of the United States must file a completed and executed Form MA-NR together with its initial application for registration on Form MA and submit a new Form MA-NR when required by filing an amendment to Form MA with the new Form MA-NR attached. See "General Instructions to Form MA-NR," Instruction 4, below. A sole proprietor should file Form MA-NR as an attachment to his or her Form MA.

In addition, a *municipal advisory firm* must file a separately completed and executed Form MA-NR for (i) every general partner and/or *managing agent* of the firm that is a *non-resident*, and (ii) every *non-resident* natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf. Form MA-NR must be completed and executed by these *persons* regardless of whether the firm itself is domiciled in the United States or is a *non-resident* filing a Form MA-NR on its own behalf. Form MA-NR for general partners and/or *managing agents* is filed by the firm together with the firm's Form MA. Form MA-NR for natural persons associated with the firm and engaged in *municipal advisory activities* on the firm's behalf is filed by the firm together with the Form MA-I relating to the natural person associated with the firm.

Unlike the other forms in the Form MA series, which are completed online and signed electronically, Form MA-NR must be printed out and signed manually by both the *non-resident* and the *person* designated as agent for service of process. Each of the signatures must be separately notarized, and a scanned copy of the signed and notarized form must then be attached as a PDF file to the Form MA or Form MA-I being submitted. However, it is the obligation of the *municipal advisory firm*, not the obligation of the general partner, *managing agent*, or natural person associated with the firm, to file the executed Form MA-NR with the *Commission* as an attachment to Form MA or Form MA-I, as applicable.

Failure to attach a signed and notarized Form MA-NR, where required, for a non-resident municipal advisor or for any non-resident general partner or managing agent of a municipal advisory firm or non-resident natural person associated with the municipal advisory firm and engaged in municipal advisory activities on behalf of the firm, may delay SEC consideration of the municipal advisor's application for registration.

d. Form MA-W

A business entity (including a sole proprietorship) that is registered as a *municipal advisor* but is no longer required to be registered must file Form MA-W to withdraw its registration. Specific instructions for completing Form MA-W are included on the form. (When a natural person with respect to whom a *municipal advisory firm* filed Form MA-I

is no longer associated with the firm or no longer engaged in *municipal advisory activities* on behalf of the firm, the firm must file an amendment to the Form MA-I to indicate this change.)

3. How is Form MA organized?

The main body of Form MA asks a number of questions about the *municipal advisor*, the *municipal advisor*'s business practices, the *persons* who own and *control* the *municipal advisor*, and the *persons* who engage in *municipal advisory activities* on behalf of the *municipal advisor*. All items must be completed except where otherwise indicated.

Form MA also contains several supplemental schedules that must be completed where applicable:

- Schedule A asks for information about the *municipal advisor*'s direct owners and executive officers.
- Schedule B asks for information about the *municipal advisor*'s indirect owners.
- Schedule C is used to amend information on either Schedule A or Schedule B.
- Schedule D asks for additional information on certain items and provides space for explanations.

Form MA also contains Disclosure Reporting Pages ("DRPs"), which require further details about events and *proceedings involving* the *municipal advisor* and/or the *municipal advisor*'s *associated persons* that the applicant was required to report on the main body of the form. These include Criminal Action DRPs, Regulatory Action DRPs, and Civil Judicial Action DRPs.

Form MA also includes an "Execution Page" where the form is signed. More detail on the Execution Page is provided below.

4. How is Form MA-I organized?

The main body of Form MA-I asks a number of questions about a sole proprietor and natural person associated with a *municipal advisory firm* and engaged in *municipal advisory activities* on the firm's behalf, including the residential history and employment history, and other businesses in which such *person* is engaged. All items must be completed except where otherwise indicated.

Form MA-I also contains DRPs that require further details of events and *proceedings involving* the sole proprietor and natural person associated with a *municipal advisory firm* and engaged in *municipal advisory activities* on the firm's behalf that the filer was required to report on the main body of the form. These include DRPs for reportable instances of Criminal Action, Regulatory Action, *Investigations*, Terminations,

Judgments/Liens, Civil Judicial Action, and Customer Complaint/Arbitration/Civil Litigation.

5. Who must sign Form MA or MA-I?

The individual who signs the form depends upon the *municipal advisor*'s form of organization:

- For a sole proprietorship, the sole proprietor (both forms);
- For a partnership, a general partner;
- For a corporation, an authorized principal officer; or
- For all others, an authorized individual who participates in managing or directing the *municipal advisor*'s affairs.

For purposes of these electronic forms, the signature is a typed name.

6. Where does an applicant sign Form MA?

The *municipal advisor* must sign the appropriate Execution Page – either the:

- Domestic Municipal Advisor Execution Page, if the *municipal advisory firm* (including a sole proprietor) is a resident of the United States; or

- Non-Resident Municipal Advisor Execution Page, if the *municipal advisory firm* (including a sole proprietor) is not a resident of the United States. *Non-Resident municipal advisors* must also file Form MA-NR as specified in General Instruction 2.c. above.

7. Where does a *municipal advisory firm* sign Form MA-I?

The *municipal advisory firm* must sign Form MA-I in Item 7 of the form.

8. When does Form MA need to be updated or amended?

Every *municipal advisory firm* must renew Form MA each year by filing an *annual update* within 90 days after the end of its fiscal year (calendar year for sole proprietors).

In addition to the *annual update*, a *municipal advisor* must promptly file an amendment to its Form MA whenever a material event has occurred that changes the information provided in the form.

Each time a firm accesses its Form MA after its initial filing of the form, the information from the firm's most recent previous filing will appear. Only the information that has changed will need to be amended; the applicant will not need to complete the entire form again.

For purposes of Form MA, a material event will be deemed to have occurred if:

- Information provided in response to Item 1 (Identifying Information), Item 2 (Form of Organization), or Item 9 (Disclosure Information) becomes inaccurate in any way; or

- Information provided in response to Item 3 (Successions), Item 7 (Participation or Interest of Applicant or *Associated Persons* of Applicant in *Municipal Advisory Client* or *Solicitee* Transactions), or Item 8 (Owners, Officers, and Other *Control Persons*) becomes materially inaccurate.

Note: If submitting an amendment between *annual updates*, a *municipal advisor* is not required to update the responses to Item 4 (Information About Applicant's Business), Item 5 (Other Business Activities), Item 6 (Financial Industry and Other Related *Affiliations* of *Associated Persons*), or Item 10 (Small Businesses) even if the responses to those items have become inaccurate.

A *non-resident municipal advisory firm* must promptly file an amendment to Form MA to attach an updated opinion of counsel – see General Instruction 13 below – after any changes in the legal or regulatory framework or the firm's physical facilities that would impact the ability of the *municipal advisory firm*, as a matter of law, to provide the *Commission* with access to its books and records or to inspect and examine the *municipal advisory firm*.

Failure to amend or update Form MA as required by this instruction is a violation of SEC rule 15Ba1-5 and could lead to the revocation of registration. See Securities Exchange Act of 1934 section 15B(c)(2), 15 U.S.C. 78o-4(c)(2).

9. When does Form MA-I need to be updated or amended?

Form MA-I must promptly be amended whenever any information previously provided on Form MA-I becomes inaccurate.

10. How does a *municipal advisor* file a Form MA, MA-I, MA-NR, or MA-W?

A *municipal advisor* must complete and submit the relevant form, including any required attachments, electronically. Form MA is considered "filed" with the *Commission* upon submission of a completed Form MA, together with all required additional documents, including required filings of Form MA-I, to the *Commission*'s Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. See more at General Instruction 14 below.

When a *municipal advisor's* submitted Form MA is accepted by the *Commission*, the *municipal advisor* will receive an *SEC* file number with an 867- prefix. As used in the forms, the terms "MA Registration Number" and "*Municipal Advisor* Registration Number" refer to this same *SEC* file number.

Form MA-NR, which must be printed out, signed, and notarized before being filed, is submitted in PDF format as an attachment to Form MA or Form MA-I, as applicable.

11. How does an applicant start the process of filing electronically?

Each form of the Form MA series, to be filed, must be submitted electronically to EDGAR. General information about EDGAR is available at http://www.sec.gov/info/edgar.shtml, where the EDGAR Filer Manual can also be accessed. We recommend that applicants read this filer manual before they begin using the system.

If you are already a filer on the EDGAR system: You may proceed directly to the *Commission*'s primary EDGAR filing website at https://www.edgarfiling.sec.gov and navigate the links to the Form MA series. Then, you will be given a choice of which form in the series to access and complete.

If you are new to EDGAR: Before you can electronically file with the *SEC* on EDGAR, you must become an EDGAR filer with authorized access codes. To do so, log on to the following website: https://www.filermanagement.edgarfiling.sec.gov/. Through this website, you will be able to create a "Form ID" and submit it to the *SEC* for authorization.

Upon accessing the site, you will see a screen with a warning about use of government websites for unauthorized purposes, followed by some brief instructions. At the bottom of the screen, you will see a button that says "Press Here to Begin," through which you can access Form ID. Make sure that you specify *municipal advisors*, where indicated, when accessing the form. Complete the form online and submit it to the *SEC*. When the form is accepted, you will receive, via e-mail, a unique CIK (Central Index Key) number.

After receiving your CIK number, return to the same website (https://www.filermanagement.edgarfiling.sec.gov/). Use your CIK and a passphrase to create your EDGAR access codes. Once you have your access codes, you will be able to use EDGAR. Log on to the primary EDGAR filing website at https://www.edgarfiling.sec.gov/ and navigate the links to the Form MA series. Then, you will be given a choice of which form in the series to access and complete.

12. What other legal designations and representations are made in signing the Execution Page of Form MA and Form MA-I?

Form MA: By signing the Execution Page of Form MA, if you are an authorized signatory of a domestic *municipal advisory firm* (see General Instruction 5 above), you are appointing on behalf of your firm the Secretary of State or other legally designated officer of the state in which the firm maintains its *principal office and place of business* as the firm's agent to receive service of process. You are also attesting to the truth and correctness of the information provided in the form. In addition, you are declaring on behalf of the firm that the firm's books and records will be preserved and available for

inspection and that any *person* having custody of the books and records is authorized to make them available to federal regulators.

If you are signing Form MA on behalf of a *non-resident municipal advisory firm*, you must use the version of the Execution Page that is specifically required for such firms. (See General Instruction 6.) On this page, you are attesting to the truth and correctness of the information the firm is providing on the form and making the same representations as a U.S. firm regarding books and records. Additionally, the signatory is agreeing on behalf of the firm to provide, at the firm's own expense, current, correct, and complete copies of the firm's books and records to the *SEC* upon request. A *non-resident municipal advisory firm* must designate its agent for service of process, however, on a separate form, Form MA-NR.

Form MA-I: If you are an authorized signatory of a domestic *municipal advisory firm* filing Form MA-I with respect to a natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm, by signing the Execution Page of Form MA-I, you are attesting to the truth and correctness of the information provided in the form. You are also attesting that the *municipal advisory firm* has obtained and retained written consent from the natural person associated with the firm that service of any civil action brought by, or notice of any *proceeding* before, the *SEC* or any *self-regulatory organization* in connection with the individual's *municipal advisory activities* may be given by registered or certified mail to the individual's address given in Item 1 of the form.

If you are filing Form MA-I as a sole proprietor, by signing the Execution Page of Form MA-I, you are consenting that service of process may be given to you by registered or certified mail to the address you have supplied in Item 1of the form. You are also attesting to the truth and correctness of the information you have provided in the form.

13. What is the opinion of counsel that is required to be filed by a *non-resident municipal advisory firm*?

A *non-resident municipal advisory firm* must attach to the Execution Page of its Form MA an opinion of counsel that the *municipal advisor* can, as a matter of law, provide the *Commission* with access to its books and records and that the *municipal advisor* can, as a matter of law, submit to inspection and examination by the *Commission*.

14. In what circumstances must additional documents be attached to Form MA or Form MA-I?

As already noted, an applicant filing a Form MA or a *municipal advisory firm* filing Form MA-I must complete the entire form online, including, where applicable, Schedules A, B, C, and D (in the case of Form MA) and any DRPs that are required. Note that these schedules and the DRPs comprise the form itself, and are not considered attachments. The signatures that are required on Form MA and Form MA-I are executed electronically; thus no paper document must be copied and attached to evidence a signature.

In certain circumstances, however, a filing requires the attachment of a copy (or copies) of an additional document (or documents) when the online Form MA or Form MA-I is submitted. Such copies must be filed in PDF format. Filers will be prompted to attach each such document at the appropriate place in the relevant online form. Filings that require such PDF attachments include:

- Documents relating to criminal actions. The Criminal Action DRPs of Form MA and Form MA-I require that applicable court documents (*e.g.*, criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) and other supporting documentation must be attached to, and filed electronically with, the form in conjunction with the DRPs.

- Manually-signed Form MA-NR (for *non-residents*). Form MA-NR is accessed electronically via links within Form MA and Form MA-I, and the information requested by the form may be entered online. However, the form must be printed out and signed manually – both by the *non-resident* (an authorized signatory in the case of a firm) and by the designated agent for service of process – and each of the signatures must be notarized. After the signatures and notarizations are completed, Form MA-NR must be attached in PDF format to the Form MA or Form MA-I.

- Written authorization to sign a Form MA-NR. When a Form MA-NR is signed on behalf of a *municipal advisory firm* or a natural person (whether a general partner, *managing agent*, or person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf) pursuant to a written authorization (*e.g.*, a board resolution or power of attorney), a copy of the authorization must be attached in PDF format together with the signed and notarized Form MA-NR.

- Written contractual agreements relating to a Form MA-NR. When a written contractual agreement or other written document exists that evidences (a) the designation and appointment of the U.S. agent for service of process by the *non-resident* for whom a Form MA-NR is being filed, and/or (b) the agent's acceptance of such designation and appointment, a copy of the document must also be attached in PDF format together with the signed and notarized Form MA-NR.

- Opinion of Counsel for *non-resident municipal advisory firms*. As described in General Instruction 13, a *non-resident municipal advisory firm* must attach to its Form MA an opinion of counsel that the *municipal advisor* can comply with certain requirements. A copy of the opinion must be attached in PDF file format.

15. What if the deadline for submitting an initial filing, an annual update, or amendment to a form falls on a day on which the *Commission* is not open for business?

If the deadline for submitting an initial filing, annual update, or amendment to a form occurs on a Saturday, Sunday, or holiday on which the *Commission* is not open for business, then the deadline shall be the next business day.

Section 15B(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-4(a)] authorizes the *SEC* to collect the information required by Forms MA, MA-I, MA-NR, and MA-W. The *SEC* collects the information for regulatory purposes. Filing Form MA and Form MA-I (where applicable) is mandatory for *municipal advisors* who are required to register with the *SEC*. Filing Form MA-W is mandatory for a *municipal advisor* that has a Form MA on file but is no longer required to be registered. Filing Form MA-NR is mandatory for each *non-resident municipal advisor*, *non-resident* general partner or *non-resident managing agent* of a *municipal advisor*, and *non-resident* natural person who is a person *associated* with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf. The *SEC* maintains the information submitted on these forms and, unless otherwise specified, makes it publicly available. The *SEC* will not accept forms that do not include the required information.

***SEC*'s Collection of Information**

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 control number. The Securities Exchange Act of 1934 authorizes the *SEC* to collect the information on Form MA from applicants and on Form MA-I from *municipal advisory firms*. See 15 U.S.C. 78o-4. Filing of the form is mandatory.

The main purpose of Form MA is to enable the *SEC* to register *municipal advisors*. Every applicant for registration with the *SEC* as a *municipal advisor* must file Form MA electronically with the *SEC*. See 17 CFR 240.15Ba1-2(a). The purpose of Form MA-I is to enable the *SEC* to collect information about natural persons associated with a *municipal advisory firm* and engaged in *municipal advisory activities* on behalf of the firm.

When an applicant for registration successfully transmits a Form MA and/or Form MA-I to the *SEC*'s electronic systems, the *SEC* does not make a finding that the form has been completed or submitted correctly. Form MA must be updated annually by every *municipal advisory firm*, no later than 90 days after the end of its fiscal year (calendar year for sole proprietors). Form MA also must be amended promptly during the year to reflect changes as described in these instructions. Form MA-I must be filed by every *municipal advisory firm* with respect to each natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm. Form MA-I also must be amended promptly whenever any information previously provided becomes inaccurate. The *SEC* maintains the information on the forms and, unless otherwise specified, makes it publicly available through the *SEC* website.

Anyone may send the *SEC* comments on the accuracy of the burden estimate on page 1 of the forms, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. 3507.

The information contained in the forms is part of a system of records subject to the Privacy Act of 1974, as amended. The *SEC* has published in the Federal Register the Privacy Act System of Records Notice for these records.

Intentional misstatements or omissions of fact constitute federal criminal violations.

See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

Specific Instructions for Certain Items in Form MA

These instructions provide further detail and explain how to complete certain items in Form MA.

1. Item 3: Successions

If the applicant (i) is not currently registered as a *municipal advisor* and has taken over the business of a registered *municipal advisor* or (ii) was registered as a *municipal advisor* but has changed its structure or legal status (*e.g.*, form of organization, composition of a partnership, or date or state of incorporation), a new organization has been created that has its own registration obligations under the Exchange Act. The applicant in these situations must file in accordance with the instructions below. In addition, the applicant may rely on special registration provisions in the *SEC*'s rules for "successors" to registered *municipal advisors* that are designed to ease the transition to the successor *municipal advisor*'s registration.

In situation (i), follow the instructions below under: "Succession by Application." In situation (ii), follow the instructions below under "Succession by Amendment."

a. Succession by Application. If the applicant is not registered with the *SEC* as a *municipal advisor*, and is acquiring or assuming substantially all of the assets and liabilities of the advisory business of a registered *municipal advisor*, file a new initial application for registration on Form MA. The applicant will receive a new *SEC* file number. The applicant must file the new application within 30 calendar days after the succession. On the application, make sure to check "Yes" to Item 3, enter the date of the succession in Item 3, and complete Section 3 of Schedule D.

Until the *SEC* declares the new registration effective, the applicant may rely on the registration of the acquired *municipal advisor*, but only if the acquired *municipal advisor* is no longer engaged in *municipal advisory activities*. Once the new registration is effective, a Form MA-W must be filed with the *SEC* to withdraw the registration of the acquired *municipal advisor*.

b. Succession by Amendment. If a new *municipal advisor* is formed solely as a result of a change in form of organization, composition of a partnership, or date or state of incorporation of an existing registered *municipal advisor*, and there has been no practical change in *control* or management, the new *municipal advisor* may file an amendment to the Form MA of the predecessor *municipal advisor* to reflect these changes rather than file a new, initial application. The new *municipal advisor* will keep the same *SEC* file number, and no Form MA-W should be filed. On the amendment, make sure to check "Yes" to Item 3, enter the date of the succession in Item 3, and complete Section 3 of Schedule D. The amendment must be submitted within 30 calendar days after the change or reorganization.

2. Item 4: Information About Applicant's Business

Guidance for Newly-Formed *Municipal Advisors*: Several questions in Item 4 that ask about *municipal advisory activities* assume that the *municipal advisor* has been in existence for some time. For newly-formed *municipal advisors*, responses to these questions should reflect the applicant's current *municipal advisory activities* (*i.e.*, activities at the time of filing of the Form MA), with the following exceptions:

- Applicant should base responses to Item 4-I, J, and K on the types of compensation the applicant expects to accept; and

- Applicant should base responses to Item 4-L on the types of *municipal advisory activities* in which the applicant expects to engage during the next year.

3. Additional Information

Complete the final section of Schedule D – "Miscellaneous" – if any response to an item in Form MA requires further explanation or if the applicant wishes to provide additional information.

Specific Instructions for Certain Items in Form MA-I

These instructions provide further detail and explain how to complete certain items in Form MA-I.

1. Item 1: Identifying Information

A. The Individual

***CRD* Number.** Some individuals may have an assigned number, known as a CRD Number, in the *CRD* system for the registration of broker-dealers and broker-dealer representatives or in the *IARD* system for *investment advisers* and investment adviser representatives. You are not required to provide an individual's *CRD* number if the individual does not have one.

Social Security Number. A social security number is needed for regulatory purposes. However, the version of completed Form MA-I that will be available for viewing by the public will not show a social security number.

B. *Municipal Advisory Firms* Where the Individual Is Employed

Office. The phrase "office from which the individual is or will be supervised" in subsection (2) of Item 1-B requires you to provide the information requested even if the individual does not work at that location.

2. Item 2: Other Names

This item requires you to enter – besides the full legal name you provided in Item 1 – any other name that the individual has used or is using, or by which the individual is known

or has been known, since the age of 18. Be certain to include, for example, nicknames, aliases, and names used before or after marriage.

3. Item 3: Residential History

You must provide all the addresses at which the individual has resided for the past 5 years, leaving no gaps greater than 3 months between addresses. Post office boxes are not acceptable. This information is needed for regulatory purposes. However, the version of completed Form MA-I that will be available for viewing by the public will not show the private residential addresses that you enter.

4. Item 4: Employment History

You must provide the individual's entire employment history for the past 10 years, leaving no gap greater than 3 months between entries. All entries must include beginning and end dates of employment. Account for full-time and part-time employment, self-employment, military service, and homemaking. Unemployment, full-time education, extended travel, and other, similar statuses must also be included, and entered on the line provided for "Name of *Municipal Advisor* or Company."

5. Item 5: Other Business

Provide information regarding any other business in which the individual is currently engaged, whether as a proprietor, partner, officer, director, *employee* (including independent contractor), trustee, agent, or otherwise. If you do not know exactly the number of hours the individual devotes to this business, give a reasonable estimate. If the number of hours per week or month varies, provide an average.

6. Item 6: Disclosure Questions

Note that an affirmative answer to certain disclosure questions may make an individual subject to statutory disqualification as defined in Section 3(a)(39) and Section 15B(c) of the Securities Exchange Act of 1934.

7. Item 7: Signature

Signature is effected by typing a name in the designated signature field. By typing a name in this field, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature. Submit the signed form electronically with the *Commission*. Note that if the individual is a *non-resident*, you must attach a manually-signed Form MA-NR to the form.

General Instructions to Form MA-NR

1. When must a Form MA-NR be filed?

Form MA-NR must be filed for each *non-resident municipal advisory firm* and each *non-resident* general partner and/or *managing agent* of a *municipal advisor* at the time of the *municipal advisory firm*'s initial application for registration on Form MA as an attachment to the form. In addition, a *municipal advisory firm* must file Form MA-NR as an attachment to each Form MA-I filed by the firm for a *non-resident* natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf when the firm initially files the Form MA-I.

2. Must more than one Form MA-NR be filed per *municipal advisory firm*?

In certain circumstances, yes. When you are filing a Form MA on behalf of a *municipal advisory firm*, and one or more general partners and/or *managing agents* of the firm is a *non-resident*, you must attach a separate Form MA-NR designating an agent for U.S. service of process for each such person, signed by that person and the designated agent. This requirement applies even when the firm itself is a *non-resident* and you are attaching a Form MA-NR on the firm's own behalf. You must attach a Form MA-NR for each such other person even if the person has previously designated an agent for service of process on a Form MA-NR filed by another *municipal advisor*. If you are filing Form MA-I, you must attach a Form MA-NR for every *non-resident* natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm.

3. Must a Form MA-NR be filed at any time other than a *municipal advisor*'s initial registration?

Yes. An *SEC*-registered *municipal advisory firm* that becomes a *non-resident* after the *municipal advisor firm*'s initial application has been submitted must file a Form MA-NR within 30 days of becoming a *non-resident*. The same applies when a general partner or *managing agent* of a *municipal advisory firm* becomes a *non-resident*. A *municipal advisory firm* must also file Form MA-NR within 30 days of the date that a *non-resident* becomes a general partner or *managing agent* of a *municipal advisory firm* if this occurs after the firm initially registers on Form MA. In such cases, the *municipal advisor* must file an amendment to Form MA, with the new Form MA-NR attached.

A *municipal advisory firm* must file a Form MA-NR together with Form MA-I if, after the firm's initial registration, a *non-resident* natural person becomes associated with the firm and engages in *municipal advisory activities* on the firm's behalf. In addition, a *municipal advisory firm* must file a Form MA-NR if a natural person associated with the firm and engaged in *municipal advisory activities* on behalf of the firm becomes a *non-resident* after the firm has filed a Form MA-I relating to that individual. The firm must file the Form MA-NR within 30 days of such individual becoming a *non-resident*.

Note: As discussed elsewhere in these instructions, a *non-resident municipal advisory firm* that is filing a Form MA must also comply with two further requirements. In addition to completing Form MA-NR, the firm must (a) complete the special execution page of Form MA required for *non-residents*, which includes an undertaking regarding books and records (see General Instruction 12); and (b) attach to Form MA an opinion of

counsel that the *municipal advisory firm*, as a matter of law, can provide the *Commission* with access to its books and records and can submit to inspection and examination by the *Commission* (see General Instruction 13).

4. When must a new Form MA-NR be filed?

A new Form MA-NR must be filed promptly if a previously-filed Form MA-NR becomes invalid or the information in it becomes inaccurate. (This is accomplished by submitting an amendment to Form MA with the new MA-NR attached. No other changes to any information in Form MA need be made in the amendment if not otherwise required.) This includes any change to the name or address of the *non-resident municipal advisory firm*, general partner, *managing agent*, or natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf, as well as any change to the name or address of the agent for service of process of the *municipal advisory firm*, general partner, *managing agent*, or natural person associated with the firm. Each *non-resident municipal advisory firm*, general partner, *managing agent*, and natural person associated with the firm and engaged in *municipal advisory activities* on the firm's behalf must promptly appoint a successor agent for service of process and the *municipal advisor* must file a new Form MA-NR if the *non-resident municipal advisor*, general partner, *managing agent*, or natural person associated with the firm discharges its identified agent for service of process or if its agent for service of process becomes unwilling or unable to accept service on behalf of the *non-resident municipal advisor*, general partner, *managing agent*, or natural person associated with the firm.

GLOSSARY OF TERMS

1. **Affiliate, affiliated, affiliation:** An affiliate of a *person* is (i) all the *person*'s officers, partners, or directors (or any *person* performing similar functions); (ii) all *persons* directly or indirectly *controlling* or *controlled* by the *person*; and (iii) all of the *person*'s current *employees* (other than *employees* performing only clerical, administrative, support or similar functions).

2. **Annual Update:** Within 90 calendar days after a *municipal advisory firm*'s fiscal year end (calendar year for sole proprietors), the *municipal advisory firm* must file an "*annual update*," which is an amendment to the *municipal advisor firm*'s Form MA that updates the responses to any item for which the information is no longer accurate.

3. **Associated Person** or **Associated Person of a Municipal Advisor:** Any partner, officer, director, or branch manager of a *municipal advisor* (or any *person* occupying a similar status or performing similar functions); any other *employee* of such *municipal advisor* 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 (other than *employees* who are performing solely clerical, administrative, support or similar functions); and any *person* directly or indirectly *controlling*, *controlled* by, or under common *control* with such *municipal advisor*.

4. **Charge, charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal criminal charge).

5. **CFTC:** Commodity Futures Trading Commission.

6. **Chief Compliance Officer:** The officer in charge of the *municipal advisor*'s compliance program.

7. **Client** or **Municipal Advisory Client:** Any of the *municipal advisor*'s clients. This term includes clients from which the *municipal advisor* receives no compensation. If the *municipal advisor* also engages in activities that are not *municipal advisory activities*, this term does not include clients on behalf of whom those activities are conducted.

8. **Contingent Fees:** Any fee or payment for services provided where the fee is payable upon a condition to be satisfied.

9. **Control:** The power, directly or indirectly, to direct the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise.

    - 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*.

- 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.

- 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.

- 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.

- A *person* is presumed to control a trust if the *person* is a trustee or *managing agent* of the trust.

10. **CRD:** The Web Central Registration Depository ("CRD") system operated by *FINRA* for the registration of broker-dealers and broker-dealer representatives.

11. **Discretionary Authority:** The *municipal advisor* has discretionary authority or manages assets on a discretionary basis if it has the authority to decide which securities to purchase and sell for a *client*. The *municipal advisor* also has discretionary authority if it has the authority to decide which *investment advisers* to retain on behalf of a *client*.

12. **Employee:** This term includes an independent contractor who engages in *municipal advisory activities* on the *municipal advisor*'s behalf.

13. **Enjoined:** This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining *order*.

14. **Federal Banking Agency:** This term includes any Federal banking agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).
15. **Federal Regulatory Agency:** This term includes any *Federal banking agency* and the National Credit Union Administration.

16. **Felony:** For jurisdictions that do not differentiate between a felony and a *misdemeanor*, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. This term also includes a general court martial.

17. **FINRA:** Financial Industry Regulatory Authority.

18. **Foreign Financial Regulatory Authority:** This term includes (i) a foreign securities regulatory authority; (ii) another governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *municipal advisor-related* activities; and (iii) a foreign membership organization, a function of which is to regulate the participation of its members in the *municipal advisor-related activities*.

19. **Found:** This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

20. **Guaranteed Investment Contract:** This term includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract; provided, however, that the contract relates to investments of proceeds of municipal securities or municipal escrow investments.

21. **IARD:** The Investment Adviser Registration Depository ("IARD") system operated by *FINRA* for the registration of *investment advisers* and investment adviser representatives.

22. **Investigation:** This term includes: (i) Grand jury investigations; (ii) *SEC* investigations after the "Wells" notice has been given; (iii) *FINRA* investigations after the "Wells" notice has been given or after a "*person* associated with a member," as such term is defined by The *FINRA* By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action; (iv) *NYSE Regulation* investigations after the "Wells" notice has been given or after a *person* over whom *NYSE Regulation* has jurisdiction, as defined in the applicable rules, has been advised by *NYSE Regulation* that it intends to recommend formal disciplinary action; (v) formal investigations by other *SROs*; or (vi) actions or procedures designated as investigations by other federal, state, or local jurisdictions. The term investigation does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

23. **Investment Adviser:** As defined in Section 202(a)(11) of the Investment Advisers Act of 1940.

24. **Investment-Related:** Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an *investment adviser*, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association).

25. **Investment Strategies:** The term includes plans or programs for the investment of proceeds of municipal securities that are not *municipal derivatives* or *guaranteed investment contracts*, and the recommendation of and brokerage of municipal escrow investments.

26. **Involved:** Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in an act.

27. **Managing Agent:** 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.

28. **Minor Rule Violation:** A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the *SEC*. A rule violation may be

designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned *person* does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes.)

29. **Misdemeanor:** For jurisdictions that do not differentiate between a *felony* and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. This term also includes a special court martial.

30. **MSRB** or **Board:** Municipal Securities Rulemaking Board.

31. **Municipal Advisor:** Absent the availability of an exclusion under 17 CFR 240.15Ba1-1(d)(2) or an exemption under 17 CFR 240.15Ba1-1(d)(3), this term means 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, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a *solicitation of a municipal entity or obligated person*.

32. **Municipal Advisor-Related:** Conduct that pertains to *municipal advisory activities* (including, but not limited to, acting as, or being an *associated person* of, a *municipal advisor*).

33. **Municipal Advisory Activities:** This term means the following activities that, absent the availability of an exclusion under 17 CFR 240.15Ba1-1(d)(2) or an exemption under 17 CFR 240.15Ba1-1(d)(3) to the definition of *municipal advisor*, would cause a person to be a *municipal advisor*: (i) providing 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 (ii) *solicitation of a municipal entity or obligated person* acting in such capacity.

34. **Municipal Advisory Firm:** Any organized entity that is a *municipal advisor*, including sole proprietors.

35. **Municipal Derivatives:** 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 (i) a *municipal entity* is a counterparty; or (ii) an *obligated person*, acting in such capacity, is a counterparty.

36. **Municipal Entity:** Any State, political subdivision of a State, or municipal corporate instrumentality of a State, including (i) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (ii) 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 (iii) any other issuer of municipal securities.

37. **Municipal Financial Products:** *Municipal derivatives*, *guaranteed investment contracts*, and *investment strategies*.

38. **Non-Resident:** (i) In the case of an individual, one who resides in or has his *principal office and place of business* in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or that has its *principal office and place of business* in any place not subject to the jurisdiction of the United States; or (iii) 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 subject to the jurisdiction of the United States.

39. **NYSE Regulation:** NYSE Regulation, Inc.

40. **Obligated Persons:** 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 of the municipal securities to be sold in an offering of municipal securities. This term does not include: (i) Providers of municipal bond insurance, letters of credit, or other liquidity facilities; (ii) a *person* whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility, or other credit enhancement; or (iii) the federal government.

41. **Order:** A written directive issued pursuant to statutory authority and procedures, including an order of denial, exemption, suspension, or revocation. Unless included in an *order*, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity, or other restrictions.

42. **Person:** An individual, sole proprietorship, or a firm. A firm includes any partnership, corporation, trust, limited liability company ("LLC"), limited liability partnership ("LLP"), or other organization.

43. **Principal Place of Business** or **Principal Office and Place of Business:** 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*.

44. **Proceeding:** This term includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal *charge*); or a *misdemeanor* criminal information (or equivalent formal *charge*). This term does not include other civil litigation, *investigations*, arrests or similar *charges* effected in the absence of a formal criminal indictment or information (or equivalent formal *charge*).

45. **Resign:** relates to separation from employment with any employer, is not restricted to *municipal advisor-related* or *investment-related* employments, and would include any termination in which allegations are a proximate cause of separation, even if the individual initiated the separation.

46. **Self-Regulatory Organization** or **SRO:** Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago

Board of Trade ("CBOT"), *FINRA*, *MSRB*, and *NYSE Regulation* are self-regulatory organizations.

47. **SEC** or **Commission:** Securities and Exchange Commission.

48. **Solicitation** or **Solicitation of a Municipal Entity or Obligated Person:** 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* 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* or *obligated person*. The term does not include advertising by a broker, dealer, municipal securities dealer, *municipal advisor*, or *investment adviser*, or solicitation of an *obligated person*, if such *obligated person* is not acting in the capacity of an *obligated person* or the solicitation of the obligated person is not in connection with the issuance of municipal securities or with respect to *municipal financial products*.

49. **Solicitee:** A *person* whom another *person* has *solicited* or intends to *solicit*.

50. **State Regulatory Agency:** This term includes any State securities commission (or any agency or officer performing like functions); State authority that supervises or examines banks, savings associations, or credit unions; or State insurance commission (or any agency or office performing like functions to the above).

51. **Supervised Person:** Any of the *municipal advisor*'s officers, partners, directors (or other *persons* occupying a similar status or performing similar functions), or *employees*, or any other *person* who engages in *municipal advisory activities* on the *municipal advisor*'s behalf and is subject to the *municipal advisor*'s supervision or *control*.

FORM MA

APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION
ANNUAL UPDATE OF MUNICIPAL ADVISOR REGISTRATION
AMENDMENT OF A PRIOR APPLICATION FOR REGISTRATION

Please read the General Instructions for this form and other forms in the MA series, as well as its subsection, "Specific Instructions for Certain Items in Form MA," before completing this form. All *italicized* terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

PART I

This form must be completed by *municipal advisors* that are organized entities, including sole proprietors (referred to herein as "*municipal advisory firms*" or "firms," unless the context indicates otherwise).

WARNING: Complete this form truthfully. False statements or omissions may result in denial of application, revocation of registration, administrative or civil action, or criminal prosecution. Form MA must be amended promptly upon the occurrence of certain material events, and updated at least annually, within 90 days of the end of the *municipal advisor*'s fiscal year, or, if a sole proprietor, the *municipal advisor*'s calendar year. See General Instruction 8.

Type of Filing: This is an (check the appropriate box):

☐ Initial application to register as a *municipal advisor* with the *SEC*.

Execution Page: After completing this form, you must complete the Execution Page.

Supporting Documentation: If you are required to make reportable disclosures in the Disclosure Reporting Pages, you must attach the supporting documentation.

Non-Resident Applicants: If you are a *non-resident* of the United States, certain additional requirements must be met at the time of filing your application, ***or processing of your application may be delayed***. See General Instruction 2.c. and subsection "General Instructions to Form MA-NR" of the General Instructions.

☐ *Annual update* of *municipal advisor*'s Form MA, for fiscal year ended _____, or, if a sole proprietor, for calendar year ended December 31, _____.

Execution Page: After completing this form, you must complete the Execution Page.

Changes: Are there changes in this *annual update* to information provided in the *municipal advisor*'s most recent Form MA, other than the updated Execution Page? ☐Yes ☐No

☐ Amendment (other than *annual update*) to any part of the *municipal advisor*'s most recent Form MA.

Execution Page: After completing this form, you must complete the Execution Page.

Item 1 Identifying Information

A. Full Legal Name of the Firm:

(1) Firm Name: _____
Organization *CRD* No., if any: _____

(2) Sole Proprietor: If the applicant is a sole proprietor, check the box below, and provide full last name, first name, middle name, and suffix, if any:

☐ Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

Individual CRD No., if any: _____

(3) Name Change: If full legal name has changed since the *municipal advisor*'s most recent Form MA, check here and provide the previous full legal name.
☐ _____

B. Doing-Business-As (DBA) Name:

(1) If the name under which *municipal advisor-related* business is primarily conducted is different from Item 1-A., check here and provide the DBA name.
☐ _____

(2) Previous DBA Name:

If name under which *municipal advisor-related* business is primarily conducted has changed since the *municipal advisor*'s most recent Form MA, check here and provide the previous name under which the *municipal advisor-related* business was primarily conducted.
☐ _____

(3) Additional Names:

(a) Is *municipal advisor-related* business conducted under any additional names? ☐Yes ☐No
(b) If "Yes," list any additional names on Section 1-B of Schedule D.

C. (1) IRS Employer Identification Number: _____

(2) If the applicant (such as a sole proprietor) has no employer identification number, provide the applicant's Social Security Number:

_____

The Social Security Number will not be included in publicly available versions of this registration form.

D. Registrations

(1) Form MA-T Registration: Was the applicant previously registered on Form MA-T as a *municipal advisor*?

☐ Yes If "Yes," enter the *SEC* File No. MA-T: _____
☐ No

(2) Other Registrations: Is the applicant registered as or with any of the following?

Check all that apply. For each registration box you check, provide the requested file number(s). *An applicant firm should NOT provide the organization CRD number, or other specified number, of any of its organizational affiliates, or the individual CRD number of its officers, employees, or natural person affiliates.*

☐ *Municipal Advisor* *SEC* File No.: _____
☐ Municipal Securities Dealer *SEC* File No.: _____
☐ Broker-Dealer *SEC* File No.: _____ Organization *CRD* No.: _____
☐ *Investment Adviser*
  ☐ *SEC*-Registered *SEC* File No.: _____ Organization *CRD* No.: _____
  ☐ Exempt Reporting Adviser *SEC* File No.: _____ Organization *CRD* No.: _____

Investment Adviser Registration in a US State or Other US Jurisdiction: If applicant is registered in a US state or other jurisdiction as an investment adviser, check the Registered in US State or Other US Jurisdiction box below and enter the organization *CRD* Number. In the table below, check the box for each US state or jurisdiction in which the applicant is so registered.

☐ Registered in US State or Other US Jurisdiction Organization *CRD* No. _____

Check All That Apply	US State or Jurisdiction	Code		Check All That Apply	US State or Jurisdiction	Code
	Alabama	AL			Montana	MT
	Alaska	AK			Nebraska	NE
	Arizona	AZ			Nevada	NV
	Arkansas	AR			New Hampshire	NH
	California	CA			New Jersey	NJ
	Colorado	CO			New Mexico	NM
	Connecticut	CT			New York	NY
	Delaware	DE			North Carolina	NC
	District of Columbia	DC			North Dakota	ND
	Florida	FL			Ohio	OH
	Georgia	GA			Oklahoma	OK
	Guam	GU			Oregon	OR
	Hawaii	HI			Pennsylvania	PA
	Idaho	ID			Puerto Rico	PR
	Illinois	IL			Rhode Island	RI
	Indiana	IN			South Carolina	SC
	Iowa	IA			South Dakota	SD

	Kansas	**KS**			**Tennessee**	**TN**
	Kentucky	**KY**			**Texas**	**TX**
	Louisiana	**LA**			**Utah**	**UT**
	Maine	**ME**			**Vermont**	**VT**
	Maryland	**MD**			**Virgin Islands**	**VI**
	Massachusetts	**MA**			**Virginia**	**VA**
	Michigan	**MI**			**Washington**	**WA**
	Minnesota	**MN**			**West Virginia**	**WV**
	Mississippi	**MS**			**Wisconsin**	**WI**
	Missouri	**MO**				

☐ Government Securities Broker-Dealer
SEC File No.: _____ Bank Identifier: _____

☐ Other *SEC* Registration (Specify): _____
SEC File No. (if any): _____ EDGAR CIK (if any): _____

☐ Another federal or state regulator (Specify): _____
Registration No. (if any): _____

(3) Additional Registrations

(a) Does the applicant have any additional registrations that are not listed in subsection (2)? ☐Yes ☐No

(b) If "Yes," list such additional registrations on **Section 1-D of Schedule D**.

E. ***Principal Office and Place of Business***

(1) Address: (*Do not use a P.O. Box.*)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location (area code) (telephone number)
Fax number (if any) at this location (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

(2) Additional Offices:

(a) Is *municipal advisor-related* business conducted at any office(s) other than applicant's principal office and place of business listed above? ☐Yes ☐No

(b) If "Yes," list the five largest such additional offices on **Section 1-E of Schedule D**.

(3) Mailing Address:

Complete this item only if mailing address is different from principal office and place of business address in Item 1-E.(1):

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

F. Website

(1) Provide the address of the applicant's principal website (if any):
(specify) _____

(2) Does the applicant have additional websites? ☐Yes ☐No

(3) If "Yes," how many?
(specify) ____

If "Yes," list all additional website addresses on **Section 1-F of Schedule D**.

G. If the applicant has a *Chief Compliance Officer*, provide his or her name and contact information:

Please note that the applicant must provide name and contact information for either a *Chief Compliance Officer* in this Question 1-G., or another contact person in Question 1-H below. Both may be provided.

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____ _____ _____
Last Name First Name Middle Name

_____
(other title(s), if any)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
(area code) (telephone number) (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

_____@_____
(E-mail address of *Chief Compliance Officer*)

H. Contact Person: If a *person* other than the *Chief Compliance Officer* is authorized to receive information and respond to questions about this form, provide the name and contact information for that *person*:

Please note that the applicant must provide name and contact information for either a *Chief Compliance Officer* in Question 1-G. above, or another contact person in this Question 1-H. Both may be provided.

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____ _____ _____
Last Name First Name Middle Name

_____
(other title(s), if any)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
(area code) (telephone number) (area code) (fax number)
For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.
_____@_____
(E-mail address of Contact Person)

I. Location of Books and Records

(1) Does the applicant maintain, or intend to maintain, some or all of the books and records required to be kept under *MSRB* rules and *SEC* rules at a location other than the principal office and place of business address listed in Item 1-E? ☐Yes ☐No

(2) If "Yes," list all such locations in Section 1-I of Schedule D.

J. *Foreign Financial Regulatory Authorities*

(1) Is the applicant registered with a *foreign financial regulatory authority*? Answer "no" even if *affiliated* with a business that is registered with a *foreign financial regulatory authority*. ☐Yes ☐No

(2) If "Yes," list all such registrations in **Section 1-J of Schedule D.**

K. Business *Affiliates* of the Applicant

(1) Is the applicant *affiliated* with any other domestic or foreign business entity? ☐Yes ☐No

(2) If "Yes," provide the names of all such *affiliates* and any applicable registrations in **Section 1-K of Schedule D.**

Item 2 Form of Organization

A. Applicant's Form of Organization

If this is not an initial application, and the applicant's form of organization has changed since the applicant's most recent Form MA, see Instruction 8 of the General Instructions.

☐ Corporation ☐ Sole Proprietorship ☐ Limited Liability Partnership (LLP)
☐ Partnership ☐ Limited Liability Company (LLC) ☐ Limited Partnership (LP)
☐ Other (specify):_____

B. Month of Applicant's Annual Fiscal Year End _____

(*Sole proprietors are not required to complete this subpart B.*)

C. State, Other US Jurisdiction, or Foreign Jurisdiction Under Which Applicant is Organized

If the applicant is a corporation or limited liability company, indicate the state or jurisdiction where the applicant is incorporated. If the applicant is a partnership, indicate the name of the state or jurisdiction under the laws of which the partnership was formed. If applicant is a sole proprietor, indicate the state or jurisdiction in which applicant resides.

If this is not an initial application for registration, and the applicant's information has changed since the applicant's most recent Form MA, see General Instruction 8.

Enter the full name of the state or other US jurisdiction, or the full name, in English, of the foreign jurisdiction: _____

D. Date of Organization: _____

E. Public Reporting Company

(1) Is the applicant a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934? ☐Yes ☐No

(2) If "Yes," provide applicant's EDGAR CIK number: _____

Item 3 Successions

A. Is the applicant, at the time of this filing, succeeding to the business of a registered *municipal advisor*?

If this succession was previously reported on Form MA, do not report the succession again. Instead, check "No." See Instruction 1 of the Specific Instructions for Certain Items in Form MA included in the General Instructions.

☐ Yes If "Yes," enter the Date of Succession: _____
(mm/dd/yyyy)

☐ No

B. If "Yes" in Item 3-A., complete Section 3 of Schedule D.

Item 4 Information About Applicant's Business

Note: Instruction 2 of the Specific Instructions for Certain Items in Form MA included in the General Instructions provides guidance for newly formed municipal advisors completing this Item 4.

Employees

If the applicant is organized as a sole proprietorship, include the sole proprietor as an employee.

A. Number of *Employees*: Approximate number of *employees* of applicant. Include full- and part-time *employees,* but do not include clerical, administrative, or support workers (or workers performing similar functions): _____ (If none, enter a zero.)

B. *Municipal Advisory Activities*: Approximately how many of these *employees* engage in *municipal advisory activities*? (*Include such employees even if they perform other functions in addition to engaging in municipal advisory activities*.) _____ (If none, enter a zero.)

C. Registered Representatives

(1) Approximately how many of the *employees* who are included in the response to part B are registered representatives of a broker-dealer? _____ (If none, enter a zero.)

(2) Approximately how many are investment adviser representatives? _____ (If none, enter a zero.)

D. Firms and Other *Persons* that *Solicit* on Behalf of the Applicant

Approximately how many firms and other *persons* who are not employed by the applicant and who are not otherwise *associated persons* of the applicant *solicit clients* on the applicant's behalf? (*Count a firm only once; do not count each of the firm's employees that solicits on the applicant's behalf.*)

_____ (If none, enter a zero.)

Please list the names of these firms and other *persons* on **Section 4-D of Schedule D.**

E. *Employees* Also Acting as *Affiliates* of the Applicant

(1) Does the applicant have any *employees* that also do business independently on the applicant's behalf as *affiliates* of the applicant? ☐Yes ☐No

(2) If "Yes," provide the total number of such *employees*: _____

(3) List the names of these *employees* on **Section 4-E of Schedule D**.

Clients

F. Types of *Clients*: Approximately how many *clients* did the applicant serve in the context of its *municipal advisory activities* during its most-recently completed fiscal year? _____ (If none, enter a zero and check box 5 below.)

The applicant has the following types of *clients*:

Check all that apply.

☐ (1) *Municipal entities*
☐ (2) Non-profit organizations (*e.g.*, 501(c)(3) organizations) who are *obligated persons*
☐ (3) Corporations or other businesses not listed above who are *obligated persons*
☐ (4) Other: _____
☐ (5) Not applicable - applicant engages only in *solicitation*; does not serve *clients* in the context of its *municipal advisory activities*.

G. *Solicitations* of *Municipal Entities* and *Obligated Persons*

Approximately how many *municipal entities* and *obligated persons* were *solicited* by the applicant on behalf of a third-party during its most-recently completed fiscal year? (*If the applicant solicits its clients in addition to serving these clients in the context of its municipal advisory activities, the clients should be counted in the response to this Part G even if counted in Part F.*)

☐ (1) *Municipal Entities*: _____ (If none, enter a zero.)
☐ (2) *Obligated Persons*: _____ (If none, enter a zero.)
☐ (3) Total: _____

H. Types of *Persons Solicited*

The applicant *solicits* the following types of *persons*:

Check all that apply.

☐ (1) Public pension funds
☐ (2) 529 Plans
☐ (3) Local government investment pools
☐ (4) State government investment pools
☐ (5) Hospitals
☐ (6) Colleges
☐ (7) Other: _____
☐ (8) Not applicable – applicant only serves *clients*; does not engage in *solicitation* in the context of its *municipal advisory activities*.

Compensation Arrangements

I. Applicant is compensated for its advice to or on behalf of *municipal entities* or *obligated persons* with respect to *municipal financial products* or the issuance of municipal securities by:

Check all that apply.

☐ (1) Hourly charges
☐ (2) Fixed fees (not contingent on the issuance of municipal securities)
☐ (3) *Contingent fees*
☐ (4) Subscription fees (for a newsletter or other publications)
☐ (5) Other (specify): _____
☐ (6) Not applicable – applicant engages only in *solicitation*; does not serve *clients* in the context of its *municipal advisory activities*.

J. Applicant is compensated for its *solicitation* activities by:

Check all that apply.

☐ (1) Hourly charges
☐ (2) Fixed fees (not contingent on the success of *solicitations*)
☐ (3) *Contingent fees*
☐ (4) Subscription fees (for a newsletter or other publications)
☐ (5) Other (specify): _____
☐ (6) Not applicable; applicant only serves *clients*; does not engage in *solicitation* as part of its *municipal advisory activities*.

K. Does the applicant receive compensation, in the context of its *municipal advisory activities*, from anyone other than *clients*? ☐Yes ☐No

If "Yes," please explain:

_____
_____
_____

Applicant's Business Relating to Municipal Securities

L. Applicant is engaged in the following types of activities:

Check all that apply.

☐ (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* (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 broker, dealer, *municipal advisor* or *investment adviser* (*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 *person* or firm (*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

☐ (11) Other (specify):_____

Item 5 Other Business Activities

A. Applicant is actively engaged in business in or as a:

Other Business		**(i) Is Applicant Actively Engaged?** Check all that apply.	**(ii) Is this Applicant's Primary Business(es)?** Check all that apply.	**(iii) Jurisdiction(s) where licensed:**
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	☐	☐	
7.	Major security-based swap participant	☐	☐	
8.	Swap dealer	☐	☐	
9.	Security-based swap dealer	☐	☐	
10.	Trust company	☐	☐	
11.	Real estate broker, dealer, or agent	☐	☐	
12.	Insurance company, broker, or agent	☐	☐	
13.	Banking or thrift institution (including a separately identifiable department or division of a bank)	☐	☐	
14.	*Investment adviser* (including financial planners)	☐	☐	

15.	Attorney or law firm	☐	☐	_____
16.	Accountant or accounting firm	☐	☐	_____
17.	Engineer or engineering firm	☐	☐	
18.	Other financial product advisor (specify): _____	☐	☐	

B. Other Business:

(1) Is applicant actively engaged in any other business not listed in Part A of this Item (other than engaging in *municipal advisory activities*)? ☐Yes ☐No

(2) If "Yes" to Part B-1., is this other business applicant's primary business? ☐Yes ☐No

(3) If "Yes" to Part B-2., describe the other business on **Section 5-B of Schedule D**.

Item 6 Financial Industry and Other Activities of *Associated Persons*

A. Applicant has one or more *associated persons* that is a:

Check all that apply.

"Associated Person" herein refers to a person who is an associated person of a municipal advisor. Note that "associated person" includes employees and persons with control over the municipal advisor that do not themselves engage in municipal advisory activities, but does not include employees that are performing solely clerical, administrative, support or other similar functions. Note also that more than one box may be applicable to any such associated person. For example, if an associated person is both a swap dealer and security-based swap dealer, check both boxes (4) and (5) below.

☐ (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) Attorney 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*

Total *Associated Persons*: Provide the total number of all such *associated persons*: _____

Provide the total number of such associated persons, not the number of boxes checked. For example, if the applicant's associated persons are 2 broker-dealers, 1 investment company, and 2 pension consultants, then 3 boxes would be checked in Item 6-A.1 to 20, while the total number of such associated persons entered in Item 6-A, Total Associated Persons, would be 5. If there are no associated persons, enter 0.

B. Applicant must list all such *associated persons*, including foreign *associated persons*, on Section 6 of Schedule D.

If Item 6-A, Total Associated Persons, is 2 or more, the applicant must complete a separate Section 6 of Schedule D for each associated person.

Item 7 Participation or Interest of Applicant, or of *Associated Persons* of Applicant, in *Municipal Advisory Client* or *Solicitee* Transactions

Proprietary Interest in Municipal Advisory Client or Solicitee Transactions

A. Does applicant or any *associated person*:

(1) buy securities or other investment or derivative products for itself from *clients* or *solicitees* in the context of its *municipal advisory activities*, or sell securities it owns to such *clients* or *solicitees*? ☐Yes ☐No

(2) buy or sell for itself securities (other than shares of mutual funds) or other investment or derivative products that the applicant also recommends to such *clients* or *solicitees*? ☐Yes ☐No

(3) enter into derivatives contracts with such *clients* or *solicitees*? ☐Yes ☐No

(4) recommend securities or other investment or derivative products to such *clients* or *solicitees* in which applicant or any *associated person* has some other proprietary (ownership) interest (other than those mentioned in Items 7-A(1), (2) or (3) above)? ☐Yes ☐No

Sales Interest in Client or Solicitee Transactions

B. Does applicant or any *associated person*:

(1) recommend purchases of securities or derivatives to *clients* or *solicitees* that are served by the applicant or *associated person*, for which the applicant or any *associated person* serves as underwriter, general or managing partner, or purchaser representative? ☐Yes ☐No

(2) recommend purchases or sales of securities or derivatives to such *clients* or *solicitees* in which applicant or any *associated person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? ☐Yes ☐No

Investment or Brokerage Discretion

C. Does applicant or any *associated person* have *discretionary authority* to determine the:

(1) securities or other investment or derivative products to be bought or sold for the account of a *client* or *solicitee*? ☐Yes ☐No

(2) amount of securities or other investment or derivative products to be bought or sold for the account of such a *client* or *solicitee*? ☐Yes ☐No

(3) (a) broker or dealer to be used for a purchase or sale of securities or other investment or derivative products for the account of such a *client* or *solicitee*? ☐Yes ☐No

(b) If "Yes," are any of the brokers or dealers *associated persons*? ☐Yes ☐No

(4) commission rates or other fees to be paid to a broker or dealer for such a *client*'s or *solicitee*'s securities transactions or transactions in other investment or derivative products? ☐Yes ☐No

D. (1) Does applicant or any *associated person* recommend brokers, dealers or *investment advisers* to *clients* or *solicitees* in the context of its *municipal advisory activities*? ☐Yes ☐No

(2) If "Yes," is any such broker, dealer, or *investment adviser* an *associated person*? ☐Yes ☐No

In responding to Items 7-E and 7-F below, consider all cash and non-cash compensation that the applicant or an associated person gave or received from any person in exchange for referrals of such clients or solicitees, including any bonus that is based, at least in part, on the number or amount of such referrals.

E. Does the applicant or any *associated person*, directly or indirectly, compensate any *person* for referrals of *clients* or *solicitees* in connection with *municipal advisory activities*? ☐Yes ☐No

F. Does the applicant or any *associated person*, directly or indirectly, receive compensation from any *person* for referrals of *clients* or *solicitees* in connection with *municipal advisory activities*? ☐Yes ☐No

Item 8 Owners, Officers, and Other *Control Persons*

A. Identifying Owners, Officers, and Other *Control Persons*

(1) In this Item, identify every *person* that, directly or indirectly, *controls* the applicant, or that the applicant directly or indirectly *controls*.

(a) If this is an initial application, the applicant must complete Schedule A and Schedule B. Schedule A asks for information about direct owners and executive officers. Schedule B asks for information about indirect owners.

(b) If this is an amendment updating information reported on either the Schedule A or Schedule B (or both) filed with the applicant's initial application, the applicant must also complete Schedule C.

(2) Does any *person* not named in Item 1-A or Schedules A, B, or C, directly or indirectly, *control* the applicant's management or policies? ☐Yes ☐No

(3) If "Yes" to Item 8-A.2. above, complete **Section 8-A of Schedule D**.

B. Public Reporting Companies

(1) Is any *person* in Schedules A, B, or C, or in Section 8-A of Schedule D a public reporting company under
Sections 12 or 15(d) of the Securities Exchange Act of 1934? ☐Yes ☐No

(2) If "Yes" to Item 8-B.1. above, complete **Section 8-B of Schedule D**.

Item 9 Disclosure Information

In this Item, provide information about the criminal, regulatory, and judicial history, if any, of the applicant and each associated person of the applicant.

This information is used to determine whether to approve an application for registration, to decide whether to revoke registration, or to place limitations on the applicant's activities as a municipal advisor, and to identify potential problem areas on which to focus during on-site examinations. One event may result in the requirement to answer "Yes" to more than one question below.

Refer to the Glossary of Terms for explanations of italicized terms, such as associated person.

Criminal Action Disclosure

If the answer is "Yes" to any question below in Part A or B below, complete a ***Criminal Action DRP****.*

Disclosure of any event listed in this Criminal Action Disclosure section is not required if the date of the event was more than ten years ago. For purposes of calculating this ten-year period, the date of an event is the date that the final order, judgment, or decree was entered, or the date that any rights of appeal from preliminary orders, judgments, or decrees lapsed.

Check all that apply:

A.In the past ten years, has the applicant or any *associated person*:

(1) been convicted of any *felony*, or pled guilty or nolo contendere ("no contest") to any *charge* of a *felony*, in a domestic, foreign, or military court? ☐Yes ☐No

(2) been *charged* with any *felony*? ☐Yes ☐No

The response to Item 9-A(2) may be limited to charges that are currently pending.

B. In the past ten years, has the applicant or any *associated person*:

(1) been convicted of any *misdemeanor*, or pled guilty or nolo contendere ("no contest"), in a domestic, foreign, or military court to any *charge* of a *misdemeanor* in a case *involving*: *municipal advisor-related* business, investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? ☐Yes ☐No

(2) been *charged* with a *misdemeanor* of the kind listed in Item 9-B(1)? ☐Yes ☐No

The response to Item 9-B(2) may be limited to charges that are currently pending.

Regulatory Action Disclosure

If the answer is "Yes" to any question in Parts C-G below, complete a ***Regulatory Action DRP****.*

Check all that apply:

C. Has the *SEC* or the *CFTC* ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission? ☐Yes ☐No

(2) *found* the applicant or any *associated person* to have been *involved* in a violation of any *SEC* or *CFTC* regulation or statute? ☐Yes ☐No

(3) *found* the applicant or any *associated person* to have been a cause of the denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐Yes ☐No

(4) entered an *order* against the applicant or any *associated person* in connection with *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(5) imposed a civil money penalty on the applicant or any *associated person*, or *ordered* the applicant or any *associated person* to cease and desist from any activity? ☐Yes ☐No

D. Has any other *federal regulatory agency*, any *state regulatory agency*, or any *foreign financial regulatory authority* ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission, or been dishonest, unfair, or unethical? ☐Yes ☐No

(2) *found* the applicant or any *associated person* to have been *involved* in a violation of *municipal advisor-related* or *investment-related* regulations or statutes? ☐Yes ☐No

(3) *found* the applicant or any *associated person* to have been the cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐Yes ☐No

(4) entered an *order* against the applicant or any *associated person* in connection with a *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(5) denied, suspended, or revoked the registration or license of the applicant or that of any *associated person*, or otherwise prevented the applicant or any *associated person*, by *order*, from associating with a *municipal advisor-related* or *investment-related* business or restricted the activities of the applicant or any *associated person*? ☐Yes ☐No

E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* the applicant or any *associated person* to have made a false statement or omission? ☐Yes ☐No

(2) *found* the applicant 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*)? ☐Yes ☐No

(3) *found* the applicant or any *associated person* to have been the cause of a denial, suspension, revocation or restriction of the authorization of a *municipal advisor-related* or an *investment-related* business to operate? ☐Yes ☐No

(4) disciplined the applicant or any *associated person* by expelling or suspending the applicant or the *associated person* from membership, barring or suspending the applicant or the *associated person* from association with other members, or by otherwise restricting the activities of the applicant or the *associated person*? ☐Yes ☐No

F. Revocation or Suspension: Has the applicant or any *associated person* ever had an authorization to act as an attorney, accountant, or federal contractor revoked or suspended? ☐Yes ☐No

G. Regulatory *Proceedings*: Is the applicant or any *associated person* currently the subject of any regulatory *proceeding* that could result in a "Yes" answer to any part of Item 9-C, 9-D, or 9-E? ☐Yes ☐No

Civil Judicial Disclosure

If the answer is "Yes" to a question below, complete a ***Civil Judicial Action DRP***.

Check all that apply:

H. (1) Has any domestic or foreign court ever:

(a) *enjoined* the applicant or any *associated person* in connection with any *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(b) *found* that the applicant or any *associated person* was *involved* in a violation of any *municipal advisor-related* or *investment-related* statute(s) or regulation(s)? ☐Yes ☐No

(c) dismissed, pursuant to a settlement agreement, a *municipal advisor-related* or *investment-related* civil action brought against the applicant or any *associated person* by a state or other US jurisdiction or a *foreign financial regulatory authority*? ☐Yes ☐No

(2) Current *Proceedings*: Is the applicant or any *associated person* the subject of any currently pending civil *proceeding* that could result in a "Yes" answer to any part of Item 9-H(1)? ☐Yes ☐No

Item 10 Small Businesses

The *SEC* is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, the *SEC* needs to determine whether you meet the Small Business Administration's definition of "small business" for purposes of entities that provide investment and related activities. Accordingly, answer "Yes" or "No," as appropriate, to the questions below:

A. Did the applicant have annual receipts of less than $7 million during its most recent fiscal year (or during the time the applicant has been in business, if it has not completed its first fiscal year in business)? ☐Yes ☐No

B. Is the applicant *affiliated* with any business or organization that had annual receipts of $7 million or more during its most recent fiscal year (or during the time it has been in business, if it has not completed its first fiscal year in business)? ☐Yes ☐No

FORM MA
SCHEDULE A

Direct Owners and Executive Officers of the Applicant

1. **Complete Schedule A only if submitting an initial application.** Schedule A asks for information about the applicant's direct owners and executive officers. Use Schedule C to amend this information. To determine direct ownership and executive officer status, see instruction 2 below.

   Separate subparts of Schedule A must be completed for: (1) direct owners that are business entities, and (2) direct owners and executive officers who are natural persons, as follows:

   - **Complete Schedule A-1: "Direct Owners of Applicant – Business Entities,"** for owners that are organized as a business or other legal entity, such as a corporation, partnership, trust, or limited liability company.

   - **Complete Schedule A-2: "Direct Owners and Executive Officers of Applicant – Natural Persons,"** for owners who are individuals, including sole proprietors, and for executive officers.

2. **List in either Schedule A-1 or Schedule A-2 below, or both, as applicable, the full names of:**

   (a) If applicant is organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of the applicant's voting securities, unless applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act). Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of the applicant's voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security;

   (b) If the applicant is organized as a partnership, all general partners and each limited and special partner that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital;

   (c) In the case of a trust, a *person* that directly owns 5% or more of a class of the applicant's voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital, the trust and each trustee;

   (d) If the applicant is organized as a limited liability company ("LLC"), (i) each member that has the right to receive upon dissolution, or has contributed, 5% or more of the applicant's capital, and (ii) if managed by elected managers, all elected managers; and

   (e) Each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, *Chief Compliance Officer*, director and any other individuals with similar status or functions (applies in Schedule A-2 only).

3. **In the DE/FE column of Schedule A-1 below**, enter "DE" if the owner is a domestic entity, or "FE" if the owner is an entity organized, incorporated or domiciled in a foreign country.

4. **Complete the Title or Status column** by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member. For shareholders or members, indicate the class of securities owned (if more than one is issued). In the next column, indicate the date that the title or status was

acquired.

5. **Ownership codes are:**

NA - less than 5%
A - 5% but less than 10%
B - 10% but less than 25%
C - 25% but less than 50%
D - 50% but less than 75%
E - 75% or more

6. (a) **In the *Control Person* column**, enter "Yes" in the first sub-column if the *person* has *control* as defined in the Glossary of Terms to Form MA, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) **In the PR sub-column (Schedule A-1 only)** enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

7. (a) **For Schedule A-1,** enter the organization *CRD* number. If not registered with the *CRD*, then enter the IRS Tax Number, Employer Identification Number ("EIN"), or Foreign Business Number.

(b) **For Schedule A-2,** enter the individual *CRD* number. If not registered with the *CRD*, then enter the Social Security Number ("SSN") or Foreign Identity Number; and enter the Date of Birth ("DOB"). Social security numbers, foreign identity numbers, and dates of birth will not be publicly disseminated.

8. **Does applicant have any indirect owners to be reported on Schedule B?** ☐Yes ☐No

Schedule A-1: Direct Owners of Applicant – Business Entities

BUSINESS ENTITY FULL LEGAL NAME	DE/FE	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)			
			MM	YYYY		Yes/No	PR	*CRD* No.	IRS Tax No.	EIN	Foreign Bus. No.

Schedule A-2: Direct Owners and Executive Officers of Applicant – Natural Persons

NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.				Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB, or Foreign ID No. and DOB)			
Last Name	First Name	Middle Name			MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

FORM MA
SCHEDULE B

Indirect Owners of the Applicant

1. **Complete Schedule B only if applicant is submitting an initial application.** Schedule B asks for information about the applicant's indirect owners. The applicant must first complete Schedule A, which asks for information about direct owners. For purposes of Schedule B, an "indirect owner" includes any owner of 25% or more of any direct owner listed in Schedule A, and any owner of 25% or more of each such indirect owner going up the chain of ownership. Use Schedule C to amend the information in this schedule. To determine indirect ownership, see instructions 2 and 3 below.

   Separate subparts of Schedule B must be completed for: (1) Indirect owners that are business entities, and (2) indirect owners who are natural persons, as follows:

   - **Complete Schedule B-1: "Indirect Owners of Applicant – Business Entities,"** for owners who are organized as business or other legal entities, such as a corporation, partnership, trust, or limited liability company.

   - **Complete Schedule B-2: "Indirect Owners of Applicant – Natural Persons,"** for individuals and sole proprietors.

2. **With respect to each direct owner listed on Schedule A-1 (business entities), list in either Schedule B-1 or Schedule B-2 below, as applicable:**

   (a) in the case of a direct owner listed on Schedule A-1 that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (b) in the case of a direct owner listed on Schedule A-1 that is a partnership, all general partners and each limited and special partner that has the right to receive upon dissolution, or has contributed, 25% or more of the partnership's capital;

   (c) in the case of a direct owner listed on Schedule A-1 that is a trust, the trust and each trustee; and

   (d) in the case of a direct owner listed on Schedule A-1 that is a limited liability company ("LLC"), (i) each member that has the right to receive upon dissolution, or has contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, each elected manager.

3. **Continue up the chain of indirect ownership listing all 25% shareholders at each level.** Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. **In the DE/FE column in Schedule B-1 below,** enter "DE" if the indirect owner is a domestic entity, or "FE" if the owner is an entity organized, incorporated or domiciled in a foreign country. Complete the next column by indicating the entity in the chain of ownership in which this indirect owner has an interest.

5. **Complete the Status column** by entering the indirect owner's status as partner, trustee, elected manager, shareholder, or member. For shareholders or members, indicate the class of securities owned (if more than one is issued).

6. **Ownership codes are:**

   C - 25% but less than 50%
   D - 50% but less than 75%
   E - 75% or more
   F - Other (general partner, trustee, or elected manager)

7. **(a) In the *Control Person* column**, enter "Yes" in the first sub-column if the *person* has *control* as defined in the Glossary of Terms to Form MA, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

   (b) In the PR sub-column, for Schedule B-1 only, enter "PR" if the indirect owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

8. **(a) For Schedule B-1,** enter the organization *CRD* number. If not registered with the *CRD*, then enter the IRS Tax Number, Employer Identification Number ("EIN"), or Foreign Business Number.

   (b) For Schedule B-2, enter the individual *CRD* number. If not registered with the *CRD*, then enter the Social Security Number ("SSN") or Foreign Identity Number; and enter the Date of Birth ("DOB"). Social security numbers, foreign identity numbers, and dates of birth will not be publicly disseminated.

Schedule B-1: Indirect Owners of Applicant – Business Entities

BUSINESS ENTITY FULL LEGAL NAME	DE/FE	Entity In Which Interest Is Owned	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)			
				MM	YYYY		Yes/No	PR	*CRD* No.	IRS Tax No.	EIN	Foreign Bus. No.

Schedule B-2: Indirect Owners of Applicant – Natural Persons

NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.				Entity In Which Interest Is Owned	Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB, or Foreign ID No. and DOB)			
Last Name	First Name	Middle Name				MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

FORM MA
SCHEDULE C

Amendments to Schedules A and B

1. **Use Schedule C only to amend information requested on either Schedule A or Schedule B.** Refer to instructions in Schedule A and Schedule B, which also apply for this Schedule C.

2. **In the Type of Amendment column,** indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. **Ownership codes are:**

   NA - less than 5%
   A - 5% but less than 10%
   B - 10% but less than 25%
   C - 25% but less than 50%
   D - 50% but less than 75%
   E - 75% or more
   F - Other (general partner, trustee, or elected member)

4. **List below all changes to Schedule A:**

Schedule A-1: Direct Owners of Applicant – Business Entities

TYPE OF AMEND-MENT	BUSINESS ENTITY FULL LEGAL NAME	DE/ FE	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)			
				MM	YYYY		Yes/ No	PR	*CRD* No.	IRS Tax No.	EIN	Foreign Bus. No.

Schedule A-2: Direct Owners and Executive Officers of Applicant – Natural Persons

TYPE OF AMEND-MENT	NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.			Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB or Foreign ID No. and DOB)			
	Last Name	First Name	Middle Name		MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

5. List below all changes to Schedule B:

Schedule B-1: Indirect Owners of Applicant – Business Entities

TYPE OF AMED-MENT	BUSINESS ENTITY FULL LEGAL NAME	DE /FE	Entity In Which Interest Is Owned	Status	Date Title or Status Acquired		Owner-ship Code	*Control Person*		Organization *CRD* No. (If None: IRS Tax No., EIN, or Foreign Business No.)
					MM	YYYY		Yes/ No	PR	

Schedule B-2: Indirect Owners of Applicant – Natural Persons

TYPE OF AMEND-MENT	NATURAL PERSON FULL LEGAL NAME Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.			Entity In Which Interest Is Owned	Status	Date Title or Status Acquired		Ownership Code	*Control Person*	Individual *CRD* No. (If None: SSN and DOB or Foreign ID No. and DOB			
	Last Name	First Name	Middle Name			MM	YYYY		Yes/No	*CRD* No.	SSN	DOB	Foreign ID No.

FORM MA
SCHEDULE D

Certain items in Part I of Form MA require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an: ☐ **INITIAL** or ☐ **AMENDED Schedule D** or ☐ ***ANNUAL UPDATE***

SECTION 1-B Other Names under which *Municipal Advisor-Related* Business is Conducted

List the applicant's other business names and the jurisdictions in which they are used. A separate Schedule D must be completed for each business name and the jurisdictions where that name is used.

Select only one: ☐ Add ☐ Delete ☐ Amend
Name _____ Jurisdictions: _____
(List all jurisdictions.)

SECTION 1-D Additional Registrations of the Applicant

Indicate any additional registrations with federal or state regulators, and the relevant registration number. A separate Schedule D must be completed for each such registration.
Name _____ Registration No. _____

SECTION 1-E Additional Offices at which the Applicant's *Municipal Advisor-Related* Business is Conducted

Provide the location of the largest five additional offices (in terms of numbers of *employees*) at which the applicant's *municipal advisor-related* business is conducted other than applicant's *principal office and place of business*. A separate Schedule D must be completed for each such office.

Select only one: ☐ Add ☐ Delete ☐ Amend

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location (area code) (telephone number) | Fax number (if any) at this location (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

SECTION 1-F Additional Website Addresses

List any additional website addresses of the applicant. A separate Schedule D must be completed for each such website address.

Select only one: ☐ Add ☐ Delete ☐ Amend
Website Address: _____

SECTION 1-I Location of Books and Records

Complete the following information for each location at which the applicant keeps books and records, other than its *principal office and place of business*. A separate Schedule D must be completed for each location.

Select only one: ☐ Add ☐ Delete ☐ Amend

Name of entity where books and records are kept: _____

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location (area code) (telephone number)

Fax number (if any) at this location (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

This is (select only one):
☐ one of applicant's branch offices or *affiliates*
☐ a third-party unaffiliated recordkeeper
☐ other

Briefly describe the books and records kept at the location(s) you checked. If you checked "other," describe additionally all such location(s).

_____
_____
_____
_____

SECTION 1-J Registration with *Foreign Financial Regulatory Authorities*

List the full name, in English, of each *foreign financial regulatory authority*, provide the foreign registration number (if any), and list the full name, in English, of the country with which the applicant is registered. A separate Schedule D must be completed for each *foreign financial regulatory authority* with whom the applicant is registered.

Select only one: ☐ Add ☐ Delete ☐ Amend

_____ _____ _____
English Name of *Foreign Financial Regulatory Authority* | Foreign Registration No. (if any) | English Name of Country

SECTION 1-K Business *Affiliates* of the Applicant

Provide the name of any domestic or foreign business *affiliate* of the applicant, and any federal, state, or foreign registration of such *affiliate* and the registration number. A separate Schedule D must be completed for each such *affiliate*.

Name of *Affiliate*: _____

1. Does the *affiliate* have an applicable federal, state, or foreign registration? ☐Yes ☐No

2. If "Yes" to Section 1-K (1) above, provide the:

   (a) Name of Agency Issuing Registration (in English): _____
   (b) Registration No., if any: _____
   (c) Provide the jurisdiction (check the appropriate box, and if a US state or other jurisdiction, or a foreign country, provide the name of the jurisdiction):

   ☐ US Federal
   ☐ US State or Other US Jurisdiction: _____
   ☐ Foreign Country Name (in English): _____

SECTION 3 Successions

Complete the following information if succeeding to the business of a currently-registered *municipal advisor*. If the applicant succeeded more than one *municipal advisory firm* in the succession being reported on this Form MA, a separate Schedule D must be completed for each predecessor firm. See Instruction 1 of the Specific Instructions for Certain Items in Form MA included in the General Instructions.

Name of Predecessor *Municipal Advisory Firm*: _____

☐ *Municipal Advisor* *SEC* File No.: _____
☐ Municipal Securities Dealer *SEC* File No.: _____
☐ Broker-Dealer *SEC* File No.: _____ Organization *CRD* No.: _____
☐ *Investment Adviser*
  ☐ *SEC*-Registered *SEC* File No.: _____ Organization *CRD* No.: _____
  ☐ Exempt Reporting Adviser *SEC* File No.: _____ Organization *CRD* No.: _____

Investment Adviser Registration in a US State or Other US Jurisdiction: If predecessor *municipal advisory firm* is registered in a US state or other jurisdiction as an investment adviser, check the Registered in US State or Other US Jurisdiction box below and enter the organization *CRD* Number. In the table below, check the box for each US jurisdiction in which the applicant is so registered.

☐ Registered in US State or Other US Jurisdiction Organization *CRD* No. _____

Check All That Apply	US State or Jurisdiction	Code	Check All That Apply	US State or Jurisdiction	Code
	Alabama	AL		Montana	MT
	Alaska	AK		Nebraska	NE
	Arizona	AZ		Nevada	NV

	Arkansas	**AR**		**New Hampshire**	**NH**
	California	**CA**		**New Jersey**	**NJ**
	Colorado	**CO**		**New Mexico**	**NM**
	Connecticut	**CT**		**New York**	**NY**
	Delaware	**DE**		**North Carolina**	**NC**
	District of Columbia	**DC**		**North Dakota**	**ND**
	Florida	**FL**		**Ohio**	**OH**
	Georgia	**GA**		**Oklahoma**	**OK**
	Guam	**GU**		**Oregon**	**OR**
	Hawaii	**HI**		**Pennsylvania**	**PA**
	Idaho	**ID**		**Puerto Rico**	**PR**
	Illinois	**IL**		**Rhode Island**	**RI**
	Indiana	**IN**		**South Carolina**	**SC**
	Iowa	**IA**		**South Dakota**	**SD**
	Kansas	**KS**		**Tennessee**	**TN**
	Kentucky	**KY**		**Texas**	**TX**
	Louisiana	**LA**		**Utah**	**UT**
	Maine	**ME**		**Vermont**	**VT**
	Maryland	**MD**		**Virgin Islands**	**VI**
	Massachusetts	**MA**		**Virginia**	**VA**
	Michigan	**MI**		**Washington**	**WA**
	Minnesota	**MN**		**West Virginia**	**WV**
	Mississippi	**MS**		**Wisconsin**	**WI**
	Missouri	**MO**			

☐ Government Securities Broker-Dealer
SEC File No.: _____ Bank Identifier: _____

☐ Other *SEC* Registration (Specify): _____
SEC File No. (if any): _____ EDGAR CIK (if any): _____

☐ Another federal or state regulator (Specify): _____
Registration No. (if any): _____

SECTION 4-D Firms and Other *Persons* that *Solicit Municipal Advisor Clients* on the Applicant's Behalf

Provide the name, address, and phone number of any firm or other *person* that is not otherwise an *associated person* of the applicant that *solicits municipal advisor clients* on the applicant's behalf. A separate Schedule D must be completed for each such firm or natural person.

Name: _____

_____ _____
EDGAR CIK No. (if any) Individual *CRD* No. (if any)

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location Fax number (if any) at this location
(area code) (telephone number) (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

SECTION 4-E *Employees* That Also Do Business Independently on the Applicant's Behalf as *Affiliates* of the Applicant

Name of *Employee*:

Enter all the letters of each name and initials or other abbreviations. If no middle name, enter NMN on that line.

Last Name _____ First Name _____ Middle Name _____

EDGAR CIK No. (if any) _____ Individual *CRD* No. (if any) _____

(number and street) _____

(city) _____ (state) _____ (country) _____ (postal code) _____

Telephone number at this location (area code) (telephone number) _____

Fax number (if any) at this location (area code) (fax number) _____

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

SECTION 5-B Description of Primary Business (for businesses not listed in Part A of Item 5)

If you checked Item 5-B.2., describe the applicant's primary business (not the applicant's *municipal advisor-related* business):

_____

_____

_____

_____

SECTION 6 Financial Industry and Other Activities of *Associated Persons*

The following information must be completed for each *associated person* in every category you checked in Item 6-A. This section must be completed separately for each such *associated person*.

Select only one: ☐ Add ☐ Delete ☐ Amend

Legal Name of *Associated Person*: _____

Primary Business Name of *Associated Person*:

_____

A. *Associated person* is a:
Check all that apply.

☐ (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) Attorney 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*

B. Control Relationships and Foreign Registrations

(1) Control Relationships

(a) Does the applicant *control* or is it *controlled* by the *associated person*? ☐Yes ☐No
(b) Are the applicant and the *associated person* under common *control*? ☐Yes ☐No

(2) *Foreign Financial Regulatory Authority* Registration

(a) Is the *associated person* registered with a *foreign financial regulatory authority*? ☐Yes ☐No
(b) If the answer to (2)(a) is "Yes," list in English the name of each *foreign financial regulatory authority*, the *associated person*'s registration number with that authority (if any), and the country in which the authority has jurisdiction.

English Name of *Foreign Financial Regulatory Authority*	Registration Number (if any)	English Name of Country
English Name of *Foreign Financial Regulatory Authority*	Registration Number (if any)	English Name of Country

SECTION 8 ***Control Persons (on a basis other than 25% ownership or executive officer status)***

Section 8-A. A separate Schedule D must be completed for each *control person* not named in Item 1-A or Schedules A, B, or C that directly or indirectly *controls* the applicant's management or policies.

Select only one: ☐ Add ☐ Delete ☐ Amend
The *control person* is a (select only one): ☐ Firm or organization. You must complete Section 8-A (1).
☐ Natural person. You must complete Section 8-A (2).

(1) <u>If the *control person* is a firm or organization</u>:

Name_____

☐ *Municipal Advisor*
☐ Form MA-T Registration *SEC* File No.: _____
Effective Date: _____ Termination Date: _____

mm/dd/yyyy mm/dd/yyyy

☐ Form MA Registration *SEC* File No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Municipal Securities Dealer *SEC* File No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Broker-Dealer *SEC* File No.: _____ Organization *CRD* No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ *Investment Adviser*
☐ *SEC*-Registered *SEC* File No.: _____ Organization *CRD* No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Exempt Reporting Adviser *SEC* File No.: _____Organization *CRD* No.: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

Investment Adviser Registration in a US State or Other US Jurisdiction: If *control person* is registered in a US state or other jurisdiction as an investment adviser, check the Registered in US State or Other US Jurisdiction box below, and enter the organization *CRD* Number and other information requested. In the table below, check the box for each US state or jurisdiction in which the *control person* is so registered.

☐ Registered in US State or Other US Jurisdiction Organization *CRD* No. _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

Check All That Apply	US State or Jurisdiction	Code		Check All That Apply	US State or Jurisdiction	Code
	Alabama	**AL**			**Montana**	**MT**
	Alaska	**AK**			**Nebraska**	**NE**
	Arizona	**AZ**			**Nevada**	**NV**
	Arkansas	**AR**			**New Hampshire**	**NH**
	California	**CA**			**New Jersey**	**NJ**
	Colorado	**CO**			**New Mexico**	**NM**
	Connecticut	**CT**			**New York**	**NY**
	Delaware	**DE**			**North Carolina**	**NC**
	District of Columbia	**DC**			**North Dakota**	**ND**
	Florida	**FL**			**Ohio**	**OH**
	Georgia	**GA**			**Oklahoma**	**OK**
	Guam	**GU**			**Oregon**	**OR**
	Hawaii	**HI**			**Pennsylvania**	**PA**
	Idaho	**ID**			**Puerto Rico**	**PR**
	Illinois	**IL**			**Rhode Island**	**RI**

	Indiana	**IN**			**South Carolina**	**SC**
	Iowa	**IA**			**South Dakota**	**SD**
	Kansas	**KS**			**Tennessee**	**TN**
	Kentucky	**KY**			**Texas**	**TX**
	Louisiana	**LA**			**Utah**	**UT**
	Maine	**ME**			**Vermont**	**VT**
	Maryland	**MD**			**Virgin Islands**	**VI**
	Massachusetts	**MA**			**Virginia**	**VA**
	Michigan	**MI**			**Washington**	**WA**
	Minnesota	**MN**			**West Virginia**	**WV**
	Mississippi	**MS**			**Wisconsin**	**WI**
	Missouri	**MO**				

☐ Government Securities Broker-Dealer *SEC* File No.: _____ Bank Identifier: _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Other *SEC* Registration (Specify) _____
SEC File No. (if any): _____ EDGAR CIK (if any): _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

☐ Another Federal or State Regulator (Specify) _____
Registration No. (if any): _____
Effective Date: _____ Termination Date: _____
mm/dd/yyyy mm/dd/yyyy

Business Address

_____
(number and street)

_____ _____ _____ _____
(city) (state) (country) (postal code)

_____ _____
Telephone number at this location Fax number (if any) at this location
(area code) (telephone number) (area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

Briefly describe the nature of the *control*:

_____
_____
_____

(2) <u>If *control person* is a natural person</u>:

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____ _____ _____
Last Name First Name Middle Name

EDGAR CIK No. (if any)

Individual *CRD* No. (if any) Effective Date Termination Date

(number and street)

(city) (state) (country) (postal code)

Telephone number at this location
(area code) (telephone number)

Fax number (if any) at this location
(area code) (fax number)

For non-US telephone and fax numbers, include country code with area code and local number.

If this address is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this registration form.

Briefly describe the nature of the *control*:

Section 8-B. If any *person* named in Schedules A, B, or C or in Section 8-A of this Schedule D is a public reporting company under Section 12 or 15(d) of the Securities Exchange Act of 1934, provide the information below. A separate Section 8-B of Schedule D must be completed for each public reporting company.

1. Full legal name of the public reporting company: _____

2. The public reporting company's EDGAR CIK number: _____

3. The Schedules where the public reporting company was reported:

   Check all that apply.

   ☐ Schedule A
   ☐ Schedule B
   ☐ Schedule C, Section 4
   ☐ Schedule C, Section 5
   ☐ Schedule D, Section 8-A

Schedule D: MISCELLANEOUS

The space below may be used to explain a response to an Item or to provide any other information.

FORM MA

PART II:
DISCLOSURE REPORTING PAGES (DRPs)

CRIMINAL ACTION DISCLOSURE REPORTING PAGE (MA)

CRIMINAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA)** is an ☐ **INITIAL** ***OR*** ☐ **AMENDED** response used to report details for affirmative response**(s)** to ***Items 9-A or 9-B*** of Form MA.

Check item(s) in Form MA for which this DRP is providing details:
☐ **9-A(1)** ☐ **9-A(2)** ☐ **9-B(1)** ☐ **9-B(2)**

How to Report an Event or *Proceeding* on a Criminal Action DRP: Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. One event may result in more than one affirmative answer to **Items 9-A(1), 9-A(2), 9-B(1), and/or 9-B(2).** Use this DRP to report all *charges*, including multiple counts of the same *charge,* arising out of the same event and filed in one criminal action. Separate criminal actions arising out of the same event, and unrelated criminal actions, must be reported on separate DRPs.

Requirement to Provide Court Documents: Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be attached to, and filed electronically with, this DRP (if not previously submitted).

Check all that apply, except where noted:

A. The *person*(s) or entity(ies) concerning whom this DRP is being filed is (are) the:

Select only one.

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more *of the applicant's associated person*(s)
☐ One or more of applicant's *associated person*(s)

1. Applicant

(a) Is this DRP an amendment that seeks to remove a previously filed DRP concerning the applicant from the record? ☐ Yes ☐ No
(b) If "Yes," the reason the DRP should be removed is:

☐ The applicant is registered or has submitted an application for registration that is currently pending and the event or *proceeding* previously reported was resolved in the applicant's favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

2. *Associated Person*(s)

(a) Does this DRP concern one or more *associated persons?* ☐ Yes ☐ No

(i) If "Yes," indicate the total number of such *associated person*(s): ___

(b) Identify each such *associated person* by checking below either the box for firm or for natural person, as appropriate, and provide the requested information:

☐ **Firm**

Full legal name of the *associated person:*

_____

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____
_____

Provide the information for each additional firm below:
_____
_____

☐ **Natural Person**

Full name of the *associated person:*

Enter all the letters of each name and not initials or other abbreviations.
If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Provide the information for each additional natural person below:

_____

_____

B. DRP filed elsewhere for this event: Is an accurate and up-to-date DRP containing the information regarding the applicant or *associated person* required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 below.

NOTE: The completion of all or any part of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

CRIMINAL ACTION DRP – PART 2

1. Firm or Organization

A. Were *charge*(s) brought against a firm or organization over which the applicant or an *associated person* exercise(s)(d) *control*? ☐ **Yes** ☐ **No**

B. If "Yes," provide the following information:

(1) Enter the firm or organization name: _____

(2) Was the firm or organization engaged in a *municipal advisor-related* or *investment-related* business? ☐ Yes ☐ No

(3) What was the relationship of the applicant or the *associated person* with the firm or organization? (Include any position or title with the firm or organization.)

_____

2. Court Where Formal *Charge*(s) Were Brought: (*File a separate Criminal Action DRP for charges brought in separate courts and/or separate cases in the same court. If brought in a foreign jurisdiction, provide all the information below in English.*)

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other : _____

A. Name of the Court: _____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Number and Case Name:_____

3. Event Disclosure Detail (Use this for both organizational and individual *charges*.)

A. Date First *Charged* (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Details of Event: Report all *charges* separately. For each *charge,* provide all of the following information.

(1) First *Charge*

(a) List the *charge*/*charge* description:

_____
_____
_____
_____
_____
_____

(b) Number of counts: ___

(c) Check the applicable box: ☐ *Felony* ☐ *Misdemeanor*

(d) Plea for this *charge*:

_____

(e) (i) Is the *charge municipal advisor-related?* ☐ Yes ☐ No
(ii) If "Yes," what is the product type?

_____

(f) (i) Is the *charge investment-related?* ☐ Yes ☐ No
(ii) If "Yes," what is the product type?

_____

(g) (i) Amended *Charge*: Indicate if the original *charge* was amended or reduced:
☐ Yes ☐ No
(ii) If "Yes," provide the date the *charge* was amended or reduced (MM/DD/YYYY):

_____

Report the information for each additional *charge* below:
_____
_____

C. *Felony Charge*(s): Did any of the *charge*(s) within the event *involve* a *felony*? ☐ Yes ☐ No

4. Current Status of the Event: ☐ Pending ☐ On Appeal ☐ Final

5. Event Status Date (Complete unless status is pending) (MM/DD/YYYY): _____
☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

6. On Appeal – Judicial Review: **If Item 4 On Appeal is checked, to whom was the criminal action appealed?** (*If brought in a foreign jurisdiction, provide all the information below in English.)*

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other (specify): _____

Provide the name and location of the court, docket/case number, and case name:

_____

Date appeal filed (MM/DD/YYYY): _____

For Item 7: If Item 4 Final or On Appeal is checked, complete Item 7.
For Pending Actions, skip to Item 8.

7. Disposition Disclosure Detail (For each *charge* provide the following information):

(a) First *Charge*

(1) Disposition of the *Charge*

(Check all that apply to this *charge*.)

☐ Acquitted
☐ Amended
☐ Convicted
☐ Deferred Adjudication
☐ Dismissed
☐ *Found* not guilty
☐ Pled guilty
☐ Pled nolo contendere
☐ Pled not guilty
☐ Pretrial diversion/intervention
☐ Reduced
☐ Other (specify) _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (specify) _____

Explanation: *If more than one disposition is checked, and/or Other is checked, or the above otherwise does not adequately summarize the disposition of the charge, provide an explanation.*

_____
_____
_____
_____

(2) Date (MM/DD/YYYY): _____

(3) Sentence/Penalty: Is a sentence or other penalty *ordered*? ☐ Yes ☐ No

If "Yes," list each type (*e.g.,* prison, jail, probation, community service, counseling, education, other - specify):

_____
_____
_____

(4) Is there an incarceration in connection with this sentence? ☐ Yes ☐ No

If "Yes," provide the following details:

(i) Duration (length of the sentence): ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iii) End Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iv) Is the sentence to be served concurrently with any other sentence? ☐ Yes ☐ No

If yes, indicate the end date of the concurrent sentence (MM/DD/YYYY):

_____

(v) Explanation (Optional):

_____

_____

(5) Monetary Penalty/Fine:

(i) Was a monetary penalty/fine imposed? ☐ Yes ☐ No
If "Yes," provide the following details in (ii) and (iii) below:

(ii) Total Penalty/Fine Amount: $_____

(iii) Was any portion suspended/reduced?

☐ Yes If "Yes," how much? $_____
☐ No

(iv) Final Amount: $_____

(v) Was the final amount paid in full?

☐ Yes If "Yes," date paid in full (MM/DD/YYYY):_____
☐ No
If "No," indicate the amount unpaid: $_____
And explain the circumstances:

_____

_____

Report the disposition(s) of each additional *charge* below:

_____

_____

8. Summary of Circumstances: Use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (MA)

REGULATORY ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA)** is an ☐ **INITIAL** ***OR*** ☐ **AMENDED** response used to report details for affirmative responses to **Items 9-C, 9-D, 9-E, 9-F or 9-G** of Form MA.
Check item(s) being responded to:

☐ **9-C(1)** ☐ **9-C(2)** ☐ **9-C(3)** ☐ **9-C(4)** ☐ **9-C(5)**
☐ **9-D(1)** ☐ **9-D(2)** ☐ **9-D(3)** ☐ **9-D(4)** ☐ **9-D(5)**
☐ **9-E(1)** ☐ **9-E(2)** ☐ **9-E(3)** ☐ **9-E(4)**
☐ **9-F** ☐ **9-G**

How to Report an Event or *Proceeding* on a Regulatory Action DRP: Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. One event may result in more than one affirmative answer to **Items 9-C, 9-D, 9-E, 9-F, and/or 9-G.** If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

Check all that apply, except where noted:

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

Select only one.

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more *of the applicant's associated person*(s)
☐ One or more of applicant's *associated person*(s)

1. Applicant

(a) Is this DRP an amendment filed for the applicant that seeks to remove a previously filed DRP concerning the applicant from the record? ☐ Yes ☐ No

(b) If "Yes," the reason the DRP should be removed is:

☐ The applicant is registered or applying for registration and the event or *proceeding* was resolved in the applicant's favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

2. *Associated Person*(s)

(a) Is this DRP being filed for one or more *associated persons?* ☐ Yes ☐ No

(i) If "Yes," indicate the total number of such *associated person*(s): ___

(b) Identify each such associated firm and/or natural person in the space below:

☐ **Firm**

Full name of the *associated person:*

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Provide the information for each additional firm below:

_____

_____

☐ **Natural Person**

Full name of the *associated person:*

Enter all the letters of each name and not initials or other abbreviations.
If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Provide the information for each additional natural person below:

_____

_____

B. DRP filed elsewhere for this event: Is an accurate and up-to-date DRP containing the information regarding the applicant or *associated person* required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____

CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____

MA Registration Number: _____

Date of filing that contains the DRP (MM/DD/YYYY): _____

Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____

MA-I File Number: _____

Date of filing that contains the DRP (MM/DD/YYYY): _____

Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided.
If the answer is "No," complete Part 2 below.

NOTE: The completion of all or any part of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

REGULATORY ACTION DRP – PART 2

1. Regulatory Action was initiated by:

A. Select the Appropriate Item.

Select only one box below. A separate Regulatory Action DRP is required for each such regulator or other authority.

☐ *SEC*
☐ *CFTC*
☐ *Federal Banking Agency*
☐ National Credit Union Administration
☐ Other Federal Authority
☐ State
☐ *SRO*
☐ *Foreign Financial Regulatory Authority*
☐ Other: _____

B. Full name of the individual regulator (if not fully identified in Item 1-A) or other authority that initiated the action. For a *foreign financial regulatory authority*, please provide the full name in English.

_____

2. Sanction(s) Sought:

Check all that apply.

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil and Administrative Penalty(ies)/Fine(s)
☐ Denial
☐ Disgorgement
☐ Expulsion
☐ Injunction
☐ Prohibition
☐ Reprimand
☐ Rescission
☐ Restitution
☐ Requalification
☐ Revocation
☐ Suspension
☐ Undertaking

☐ **Other Sanction(s) Sought** (list each such additional sanction):

_____
_____
_____
_____

3. Date Initiated (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

4. Regulatory Action was brought in (*if brought in a foreign jurisdiction, provide all the information below in English):*

A. Name of the Administrative *Proceeding*, *Commission*/Agency Hearing, or other regulatory *proceeding* or forum: _____

B. Location of the *Proceeding* / Hearing:

Street Address: _____
City or County: _____ State/Country: _____

Postal Code: _____

C. Docket/Case Number: _____

5. A. Principal Product Type (check appropriate item):

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**

_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:

_____

_____

6. Allegations: Describe the allegations related to this regulatory action. (The response must fit within the space provided.)

_____

_____

_____

_____

_____

_____

7. Current Status: ☐ Pending ☐ On Appeal ☐ Final

8. Pending: If you checked Item 7 Pending, provide the following information.

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____
☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?
☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

9. **On Appeal – Administrative or Judicial Review of the Regulatory Action:** If you appealed, provide the following information.

   A. **Name of Regulator or Court Action Appealed To:** *Provide the name of the US regulator (i.e., the SEC, an SRO, other), federal court, state court or state regulator, or a foreign or international court or regulator to whom you appealed. If brought in a foreign jurisdiction, provide all the information below in English.*

   _____

   B. **Location of the Regulator or Judicial Court to Whom You Appealed:**

   Street Address: _____
   City or County: _____ State/Country: _____
   Postal Code: _____

   C. **Docket/Case Name:** _____

   D. **Docket/Case Number:**_____

   E. **Date Appeal filed** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation
   If not exact, provide explanation:

   _____

   _____

   F. **Appeal Details (including status):**

   _____

   _____

   _____

   _____

   _____

   _____

   G. **Limitation or Restrictions:** Are there any limitations or restrictions currently in effect while on appeal?
   ☐ Yes ☐ No

   If the answer is "Yes," provide details:

   _____

   _____

If you checked Item 7 Final or On Appeal, complete Items 10 through 13.
For Pending Actions, skip to Item 13.

10. A. **Resolution:** How was the action resolved? (*Check all the applicable boxes that reflect the most recent resolution of the action by a regulator or a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 10-B which part is currently on appeal.*)

☐ Acceptance, Waiver & Consent (AWC)	☐ Dismissed	☐ Stipulation and Consent
☐ Consent	☐ Judgment Rendered	☐ Withdrawn
☐ Decision	☐ *Order*	☐ Other (requires explanation)

☐ Decision & *Order* of Offer of Settlement ☐ Settled
- ☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ab initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (requires explanation)

B. Explanation: *If more than one box in Item 10-A is checked, or Other is checked, or Item 10-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if you appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____
_____
_____
_____
_____
_____

C. *Order:* If *Order* is checked above in Item 10-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐Yes ☐No

11. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator (reviewing a decision by an SRO or an Administrative Law Judge) or a court provided its resolution.*)

If not exact, provide explanation:

_____
_____
_____
_____
_____
_____

12. Resolution Detail

A. Sanction(s): Were any Sanctions *Ordered*? ☐ Yes
☐ No, none were *ordered.*

B. If "Yes," check each individual sanction below that was *ordered*:

☐ Bar (Permanent)	☐ Disgorgement*	☐ Restitution*
☐ Bar (Temporary / Time Limited)	☐ Expulsion	☐ Requalification
☐ Cease and Desist	☐ Injunction	☐ Revocation
☐ Censure	☐ Prohibition	☐ Suspension
☐ Civil and Administrative Penalty(ies)/Fine(s)*	☐ Reprimand	☐ Undertaking
☐ Denial	☐ Rescission	

*** Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?
☐ Yes ☐ No
If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanction(s) *Ordered* (list each such additional sanction):**

_____
_____
_____
_____
_____
_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 12-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 12-B. above, check the applicable box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____
_____
_____
_____
_____
_____

If the applicant or an *associated person* received in the above action one or more bars from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____
_____

(b) *Enjoined*

(i) Duration (length of time):

☐ Permanent (not limited by length of time).

☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____

_____

_____

_____

_____

_____

If the applicant or an *associated person* received in the above action one or more injunctions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____

_____

_____

If the applicant or an *associated person* received in the above action one or more suspensions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction? ☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____

_____

(c) Was the condition satisfied? ☐ Yes ☐ No

(1) If "Yes," provide the date (MM/DD/YYYY): _____
(2) If "No," explain the circumstances:

_____

_____

If the applicant or an *associated person* received in the above action one or more requalifications in connection with registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(3) Monetary Sanction(s): If you indicated in Item 12-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against:

☐ **Applicant**

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:
_____
_____

☐ ***Associated Person***

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes _____
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:
_____
_____

Provide the information for each additional *associated person* below:
_____
_____

13. **Summary of Circumstances**: Use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____
_____
_____

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (MA)

CIVIL JUDICIAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA)** is an ☐ **INITIAL** ***OR*** ☐ **AMENDED** response used to report details for affirmative responses to Item 9-H. of Form MA.

Check item(s) being responded to: ☐ **9-H(1)(a)** ☐ **9-H(1)(b)** ☐ **9-H(1)(c)** ☐ **9-H(2)**

How to Report an Event or *Proceeding* on a Civil Judicial Action DRP: Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. One event may result in more than one affirmative answer to Item 9-H. Separate cases arising out of the same event, and unrelated civil judicial actions, must be reported on separate DRPs; if they are later consolidated into a single civil judicial action, the consolidated action can be reported on one DRP.

Check all that apply, except where noted:

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

Select only one.

☐ Applicant (the *municipal advisory firm*)
☐ Applicant and one or more *of the applicant's associated person*(s)
☐ One or more of applicant's *associated person*(s)

1. Applicant

(a) Is this DRP an amendment filed for the applicant that seeks to remove a previously filed DRP concerning the applicant from the record? ☐ Yes ☐ No

(b) If "Yes," the reason the DRP should be removed is:

☐ The applicant is registered or applying for registration and the event or *proceeding* was resolved in the applicant's favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

2. *Associated Person*(s)

(a) Is this DRP being filed for one or more *associated persons?* ☐ Yes ☐ No

(i) If "Yes," indicate the total number of such *associated person*(s): ___

(b) Identify each such associated firm and/or natural person in the space below:

☐ **Firm**

Full name of the *associated person:*

_____

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____
_____

Provide the information for each additional firm below:
_____
_____

☐ **Natural Person**

Full name of the *associated person:*

Enter all the letters of each name and not initials or other abbreviations.
If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

The *associated person* is:

☐ registered with the *SEC* *SEC* Registration No. _____
☐ not registered with the *SEC*

CRD No., if any: _____

Is this DRP an amendment that seeks to remove a previously filed DRP concerning this *associated person*?
☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The *associated person*(s) is no longer associated with the advisor.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

Provide the information for each additional natural person below:

_____

_____

B. DRP filed elsewhere for this event: Is an accurate and up-to-date DRP containing the information regarding the applicant or *associated person* required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 below.

NOTE: The completion of all or any part of this form does not relieve the *municipal advisor* or *associated person* of its obligation to update its *IARD* or *CRD* records.

CIVIL JUDICIAL ACTION DRP – PART 2

1. Court Action was initiated by:

A. Select the Appropriate Item(s).

Check all that apply.

☐ *SEC* ☐ State ☐ *Foreign Financial Regulatory Authority*
☐ *CFTC* ☐ *SRO* ☐ *Municipal Advisory Firm*
☐ Other Federal Authority ☐ Commodities Exchange ☐ Private Plaintiff

☐ Other: _____

B. Plaintiff(s): Enter the full name(s) of the plaintiff(s), unless only *SEC* and/or *CFTC* is/are checked above. For a *foreign financial regulatory authority*, please provide the full name in English.

_____
_____
_____
_____
_____
_____

Were all plaintiffs fully identified in the space provided? ☐ Yes ☐ No

2. Defendant(s):

A. Enter the full name(s) of the defendant(s). For foreign defendant(s), please provide the full name(s) in English:

_____
_____
_____
_____
_____
_____

B. Are you a named defendant? ☐ Yes ☐ No If "No," describe how this action involves you:

_____
_____
_____
_____
_____
_____

3. Sanction(s) or Relief Sought (check appropriate items):

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil /Administrative Penalty(ies)/Fine(s)
☐ Denial
☐ Exemption
☐ Expulsion
☐ Injunction
☐ Money Damage(s) (Private/Civil Complaint)
☐ Prohibition
☐ Rescission
☐ Restitution
☐ Restraining Order
☐ Requalification
☐ Revocation
☐ Suspension

☐ Disgorgement ☐ Reprimand ☐ Undertaking

☐ **Other Sanction(s) or Relief Sought:**

_____
_____
_____
_____
_____
_____

4. A. **Filing Date of Court Action** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

B. **Date Notice/Process was served** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

5. **Formal Action was brought in** (*If brought in a foreign jurisdiction, provide all the information below in English):*

Check the applicable box:

☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

☐ Other : _____

A. **Name of the Court:**_____

B. **Location of the Court**

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. **Docket/Case Number and Case Name:**_____

6. A. **Principal Product Type (check appropriate item):**

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Oil & Gas
☐ Options
☐ Penny Stock

☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**

_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:

_____

_____

7. Allegations: Describe the allegations related to this civil action. (The response must fit within the space provided.)

_____

_____

_____

_____

_____

_____

8. Current Status: ☐ Pending ☐ On Appeal ☐ Final

9. Pending: If you checked Item 8 Pending, provide the following information.

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____
☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?
☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

10. On Appeal – Judicial Review: If you appealed, provide the following information.
(If brought in a foreign jurisdiction, provide all the information below in English):

A. Action Appealed to: *(Provide the name of the federal, state, foreign, or international court to whom you appealed.)* _____

B. Location of the Court:

Street Address: _____

City or County: _____ State/Country: _____
Postal Code: _____

C.Docket/Case Name: _____

D.Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

F. Appeal Details (including status):

_____

_____

_____

_____

_____

_____

G. Limitation or Restrictions: Are there any limitations or restrictions currently in effect while on appeal?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

_____

If you checked Item 8 Final or On Appeal, complete Items 11 through 14. For Pending Actions, skip to Item 14.

11. A. Resolution: How was the action resolved? *Check all the applicable boxes that reflect the most recent resolution of the action by a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 11-B which part is currently on appeal.*

☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ Judgment Rendered
☐ Opinion
☐ *Order*
☐ Settled
☐ Stipulation and Consent
☐ Withdrawn

☐ Other: _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ab initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other: _____

B. Explanation: *If more than one box in Item 11-A is checked or Item 11-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if you appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____

_____

C. *Order:* If *Order* is checked above in Item 11-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐ Yes ☐ No

12. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator or court provided its resolution.*)

If not exact, provide explanation:

_____

_____

13. Resolution Detail

A. Sanction(s): Were any Sanctions *Ordered* or Relief Granted?
☐ Yes
☐ No, none were *ordered*, or granted.

B. If "Yes," check each individual sanction *ordered* and/or relief granted below:

☐ Bar (Permanent)	☐ Exemption	☐ Rescission
☐ Bar (Temporary / Time Limited)	☐ Expulsion	☐ Restitution*
☐ Cease and Desist	☐ Injunction	☐ Restraining Order
☐ Censure	☐ Money Damage(s) (Private/Civil Complaint)*	☐ Requalification
☐ Civil /Administrative Penalty(ies)/Fine(s)*		☐ Revocation
☐ Denial	☐ Prohibition	☐ Suspension
☐ Disgorgement*	☐ Reprimand	☐ Undertaking

* **Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?
☐ Yes ☐ No
If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanctions *Ordered* or Relief Granted** (list each such additional sanction or relief):

_____

_____

_____

_____

_____

_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 13-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 13-B. above, check the applicable box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____

_____

_____

_____

_____

_____

If the applicant or an *associated person* received in the above action one or more bars from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(b) ***Enjoined***

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____
_____
_____
_____

If the applicant or an *associated person* received in the above action one or more injunctions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____
_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

(iv) Description: Provide remaining details and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.). If none, enter "None":

_____
_____
_____
_____

If the applicant or an *associated person* received in the above action one or more suspensions from registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____
_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction? ☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____

_____

(c) Was the condition satisfied? ☐ Yes ☐ No

(1) If "Yes," provide the date (MM/DD/YYYY): _____

(2) If "No," explain the circumstances:

_____

_____

If the applicant or an *associated person* received in the above action one or more requalifications in connection with registration capacities, associations, and/or other activities; and the terms specify different time periods; report the additional details below:

_____

_____

(3) Monetary Sanction(s): If you indicated in Item 13-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against:

☐ **Applicant**

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes _____
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____

_____

☐ ***Associated Person***

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?
☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?
☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____
_____

Provide the information for each additional *associated person* below:
_____
_____

14. Summary of Circumstances: Use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____
_____
_____
_____
_____

Form MA
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION

DOMESTIC MUNICIPAL ADVISOR EXECUTION

You must complete the following execution page to Form MA. This execution page must be signed and attached to your initial application for *SEC* registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form MA, you, the undersigned advisor, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business*, as your agents to receive service, and agree that such *persons* may be served any process, pleadings, subpoenas, or other papers in (a) any *investigation* or administrative *proceeding* conducted by the *Commission* that relates to the applicant or about which the applicant may have information; and (b) any civil suit or action brought against the applicant or to which the applicant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States of America or of any of its territories or possessions or of the District of Columbia, where the *investigation*, *proceeding* or cause of action arises out of or relates to or concerns *municipal advisory activities* of the *municipal advisor*. The applicant stipulates and agrees that any such civil suit or action or administrative *proceeding* may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

Signature

I, the undersigned, sign this Form MA on behalf of, and with the authority of, the *municipal advisor*. The *municipal advisor* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA as a free and voluntary act.

I certify that the advisor's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal regulatory representatives.

Signature: _____ Date: _____

Printed Name: _____ Advisor *CRD* Number (if any): _____

Title: _____

Form MA
APPLICATION FOR MUNICIPAL ADVISOR REGISTRATION

NON-RESIDENT MUNICIPAL ADVISOR EXECUTION

Instructions: If you are a *non-resident*, you must complete these steps:

1. **Execution Page:** You must complete the following *non-resident* execution page to Form MA. This execution page must be signed and attached to your initial application for *SEC* registration and all amendments to registration.

2. **Opinion of Counsel:** You must also attach to Form MA an Opinion of Counsel. See General Instructions.

3. **Form MA-NR:** You must also attach to Form MA one or more executed Form MA-NR(s) for the *non-resident municipal advisor* applicant, and, if any, the *non-resident* general partner(s) and/or *non-resident managing agents*. See General Instructions for Form MA-NR.

Non-Resident Municipal Advisor Undertaking Regarding Books and Records

By signing this Form MA, you agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the *Commission*, or at any one of its offices in the United States, as specified by the *Commission*, correct, current, and complete copies of any or all records that you are required to maintain by law. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form MA on behalf of, and with the authority of, the *non-resident municipal advisor*. The *municipal advisor* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA as a free and voluntary act.

I certify that the *municipal advisor*'s books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal regulatory representatives. Further, attached to this Form MA as an exhibit is 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 such *municipal advisor*, as required by law, and that the *municipal advisor* can, as a matter of law, submit to inspection and examination by the *Commission*. Finally, attached to this Form MA is one or more executed Form MA-NR(s) for the *non-resident municipal advisor* applicant, and, if any, the *non-resident* general partner(s) and/or *non-resident managing agents*.

Signature: _____ Date: _____

Printed Name: _____ Advisor *CRD* Number (if any): _____

Title: _____

FORM MA-I

INFORMATION REGARDING NATURAL PERSONS WHO ENGAGE IN MUNICIPAL ADVISORY ACTIVITIES

Please read the General Instructions for this form and other forms in the MA series, as well as its subsection, "Specific Instructions for Form MA-I," before completing this form. All *italicized* terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

PART I

This form must be completed by:

- Every *municipal advisory firm* applying for registration or registered as a *municipal advisor* on Form MA, to provide information regarding each natural person who is an *associated person* of the firm and engages in *municipal advisory activities* on the firm's behalf (for purposes of Form MA-I, the "individual"); and
- Every natural person (sole proprietor) applying for registration as a *municipal advisor* on Form MA, to provide additional personal information.

WARNING: Complete this form truthfully. False statements or omissions may result in denial of a *municipal advisor*'s application or revocation or suspension of such registration, administrative or civil action, or criminal prosecution. Form MA-I must be amended promptly whenever any information previously provided becomes inaccurate. See General Instruction 9.

Type of Filing:
This is an (check the appropriate box):

☐ Initial Form MA-I

Execution Pages: Before submitting this form, you must complete the Execution Page.

Supporting Documentation: If you are required to make reportable disclosures in the Disclosure Reporting Pages, you must attach the supporting documentation.

Non-Resident Individuals: If the individual is a *non-resident* of the United States, you must attach a completed Form MA-NR signed by the individual to this Form MA-I at the time of the initial filing of Form MA-I See the General Instructions.

☐ Amendment to the most recent Form MA-I

☐ Amendment to indicate that the individual is no longer an *associated person* of the *municipal advisory firm* or no longer engages in *municipal advisory activities* on its behalf. (*If you check this box, complete only Item 1-A and Item 7 below.*)

Item 1 Identifying Information

Is this an amendment to change identifying information regarding the individual named in part A below? ☐ *Yes* ☐ *No*

A. The Individual

Full Legal Name:
Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter

NMN on that line.

Last Name	First Name	Middle Name	Suffix

Individual *CRD* No. (if any): _____

Social Security No.: _____ _____ The Social Security Number will not be included in publicly available versions of this form.

B. *Municipal Advisory Firms* Where the Individual Is Employed

In providing your responses, please note that the definition of "employee" for purposes of this form includes an independent contractor who engages in municipal advisory activities on behalf of a municipal advisory firm. See Glossary of Terms.

Is the individual *employed* at more than one *municipal advisory firm*? ☐ Yes ☐ No

If the answer is "Yes," enter the number of *municipal advisory firms* the individual is employed with (sole proprietors not employed with any other firm enter 1): ____

(For individuals who are employed with more than one firm, provide the information required by this Item 1-B for each such firm. For sole proprietors, enter the legal name under which you conduct your *municipal advisor-related* activities, and skip to Item 1-B.1.)

Full Legal Name of *municipal advisory firm* with which the individual is employed:

_____

Name under which *municipal advisor-related* business is primarily conducted, if different from above:

_____

Date that the individual's most recent employment with this *municipal advisory firm* commenced (MM/DD/YYYY): _____

Does the individual have an independent contractor relationship with the above-named firm? ☐ Yes ☐ No

(1) *Municipal Advisory Firm's* Registration Information:

Is the *municipal advisory firm* currently registered on Form MA as a *municipal advisor*? (Answer "Yes" if you have already filed Form MA and your application for registration on that form has been approved. Otherwise, answer "No.")

☐ Yes *SEC* File No. _____

☐ No

If "No," has the *municipal advisory firm* filed a Form MA application?

☐ Yes Form MA Filing Date: _____ (MM/DD/YYYY) EDGAR CIK No.: _____

☐ No

If "No," please provide an explanation:

_____

_____

(2) Office

Enter the following information for each office of the *municipal advisory firm* where the individual is or will be physically located, and each office from which the individual is or will be supervised:

☐ Located At: ☐ Supervised From:
Start Date: _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

If the office where the individual is or will be physically located is a private residence, check this box: ☐
A private residential address will not be included in publicly available versions of this form.

Item 2 Other Names

Enter the following information for all other names that the individual has used or is using, or by which the individual is known or has been known, other than the individual's legal name, since the age of 18. This space should include, for example, nicknames, aliases, and names used before or after marriage.

Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

Item 3 Residential History

Starting with the current address, enter the following information for all the individual's residential addresses for the past 5 years. Leave no gaps greater than three months between addresses. Report changes in an amendment to this form as they occur in the future. Private residential addresses will not be included in publicly available versions of this form.

Current Address:

From (MM/YYYY): _____ To (MM/YYYY): _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Prior Address:

From (MM/YYYY): _____ To (MM/YYYY): _____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Item 4 Employment History

Provide complete employment history of the individual for the past 10 years. Include the *municipal advisory firm(s)* entered in Item 1-B. Enter the following information for each employer. Account for all time, leaving no gaps

longer than three months. Include full- and part-time employment, self-employment, military service, and homemaking. Also include statuses such as unemployed, full-time education, extended travel, or other similar statuses. Such statuses should be entered in the space provided below for "Name of *Municipal Advisory Firm* or Company."

Current Employer:

From (MM/YYYY): _____ To (MM/YYYY): _____
Name *of Municipal Advisory Firm* or Company:
_____
City: _____ State: _____ Country: _____ Postal Code: _____
Municipal Advisor-Related Business? ☐ Yes ☐ No
Investment-Related Business? ☐ Yes ☐ No
Position Held: _____

Prior to the Above:

From (MM/YYYY): _____ To (MM/YYYY): _____
Name of *Municipal Advisory Firm* or Company:
_____
City: _____ State: _____ Country: _____ Postal Code: _____
Municipal Advisor-Related Business? ☐ Yes ☐ No
Investment-Related Business? ☐ Yes ☐ No
Position Held: _____

Item 5 Other Business

Is the individual currently engaged in any other business either as a proprietor, partner, officer, director, *employee,* trustee, agent or otherwise? ☐ Yes ☐ No

If "Yes," please enter the following details for each other business below:

Other Business:

Start Date (MM/YYYY): _____
Name of Business:
_____
Street Address 1: _____
Street Address 2: _____
City: _____ State: _____ Country: _____ Postal Code: _____

Is this a *municipal advisor-related* business? ☐ Yes ☐ No
Is this an *investment-related* business? ☐ Yes ☐ No

Nature of Business: _____
Position/Title/Relationship: _____
Approximate No. of Hours / Month Devoted to This Business: _____
Description of Duties: _____

Item 6 Disclosure Information

If the answer to any of the questions in Items 6A–6J and 6M is "Yes," provide details of all events or *proceedings* on the appropriate Disclosure Reporting Pages ("DRPs") in Part II.

One event or proceeding may result in the requirement to answer "Yes" to more than one question below. Refer to the Glossary of Terms for definitions or descriptions of italicized terms.

CRIMINAL ACTION DISCLOSURE

If the answer is "Yes" to any question below in Item 6A or 6B, complete a ***Criminal Action DRP****.*

Item 6A.

(1) Has the individual ever:

(a) been convicted of any *felony*, or pled guilty or nolo contendere ("no contest") to any *charge* of a *felony* in a domestic, foreign, or military court? ☐Yes ☐No

(b) been *charged* with any *felony?* ☐Yes ☐No

(2) Based upon activities that occurred while the individual exercised *control* over it, has an organization ever:

(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any *charge* of a *felony?* ☐Yes ☐No

(b) been *charged* with any *felony?* ☐Yes ☐No

Item 6B.

(1) Has the individual ever:

(a) been convicted of any *misdemeanor* or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *charge* of a *misdemeanor involving: municipal advisory activities* or a *municipal advisor-related* or *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? ☐Yes ☐No

(b) been *charged* with any *misdemeanor* of the kind described in 6B(1)(a)? ☐Yes ☐No

(2) Based upon activities that occurred while the individual exercised *control* over it, has an organization ever:

(a) been convicted of any *misdemeanor* or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any *charge* of a *misdemeanor* of the kind specified in 6B(1)(a)? ☐Yes ☐No

(b) been *charged* with any *misdemeanor* of the kind specified in 6B(1)(a)? ☐Yes ☐No

REGULATORY ACTION DISCLOSURE

If the answer is "Yes" to any question below in Items 6C-6G(1), complete a ***Regulatory Action DRP****.*

Item 6C.

Has the *SEC* or the *CFTC* ever:

(1) *found* the individual to have made a false statement or omission? ☐Yes ☐No

(2) *found* the individual to have been *involved* in a violation of any *SEC* or *CFTC* regulation or statute? ☐Yes ☐No

(3) *found* the individual to have been a cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* business or *investment-related* business to operate? ☐Yes ☐No

(4) entered an *order* against the individual in connection with *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(5) imposed a civil money penalty on the individual, or *ordered* the individual to cease and desist from any activity? ☐Yes ☐No

(6) *found* the individual to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*, or *found* the individual to have been unable to comply with any provision of such Acts, rules or regulations? ☐Yes ☐No

(7) *found* the individual to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any *person* of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

(8) *found* the individual to have failed reasonably to supervise another *person* subject to his or her supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

Item 6D.

(1) Has any other *federal regulatory agency* or any *state regulatory agency* or *foreign financial regulatory authority* ever:

(a) *found* the individual to have made a false statement or omission or to have been dishonest, unfair or unethical? ☐Yes ☐No

(b) *found* the individual to have been *involved* in a violation of *municipal advisor-related* or *investment-related* regulation(s) or statute(s)? ☐Yes ☐No

(c) *found* the individual to have been a cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or *investment-related* business to operate? ☐Yes ☐No

(d) entered an *order* against the individual in connection with a *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(e) denied, suspended, or revoked the individual's registration or license or otherwise, by *order,* prevented the individual from associating with a *municipal advisor-related* or *investment-related* business or restricted his or her activities? ☐Yes ☐No

(2) Has the individual ever been subject to any final *order* of a state securities commission (or any agency or office performing like functions), a state authority that supervises or examines banks, savings associations, or credit unions, a state insurance commission (or any agency or office performing like functions), a *federal banking agency,* or the National Credit Union Administration, that:

(a) bars the individual from association with an entity regulated by such commission, authority, agency, or office, or from engaging in the business of securities, insurance, banking, savings association activities, or

credit union activities; or ☐Yes ☐No

(b) is based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? ☐Yes ☐No

Item 6E.
Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* the individual to have made a false statement or omission? ☐Yes ☐No

(2) *found* the individual 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*)? ☐Yes ☐No

(3) *found* the individual to have been a cause of a denial, suspension, revocation, or restriction of the authorization of a *municipal advisor-related* or *investment-related* business to operate? ☐Yes ☐No

(4) disciplined the individual by expelling or suspending him or her from membership, barring or suspending the individual's association with its members, or restricting the individual's activities? ☐Yes ☐No

(5) *found* the individual to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*, or *found* the individual to have been unable to comply with any provision of such Acts, rules or regulations? ☐Yes ☐No

(6) *found* the individual to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any *person* of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

(7) *found* the individual to have failed reasonably to supervise another *person* subject to his or her supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the *MSRB*? ☐Yes ☐No

Item 6F.

Has the individual ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended? ☐Yes ☐No

Item 6G.
Has the individual been notified, in writing, that he or she is currently the subject of any:

(1) regulatory complaint *or proceeding* that could result in a "Yes" answer to any part of 6C, D or E? ☐Yes ☐No

INVESTIGATION DISCLOSURE

If the answer is "Yes" to Item 6G(2) below, complete an ***Investigation DRP****.*

(2) *investigation* that could result in a "Yes" answer to any part of 6A, B, C, D or E? ☐Yes ☐No

CIVIL JUDICIAL ACTION DISCLOSURE

If the answer is "Yes" to a question below in Item 6H, complete a ***Civil Judicial Action DRP****.*

Item 6H.

(1) Has any domestic or foreign court ever:

(a) *enjoined* the individual in connection with any *municipal advisor-related* or *investment-related* activity? ☐Yes ☐No

(b) *found* that the individual was *involved* in a violation of any *municipal advisor-related* or *investment-related* statute(s) or regulation(s)? ☐Yes ☐No

(c) dismissed, pursuant to a settlement agreement, a *municipal advisor-related* or *investment-related* civil action brought against the individual by a domestic jurisdiction or *foreign financial regulatory authority?* ☐Yes ☐No

(2) Is the individual named in any currently pending civil *proceeding* that could result in a "Yes" answer to any part of 6H(1)? ☐Yes ☐No

CUSTOMER COMPLAINT/ARBITRATION/CIVIL LITIGATION DISCLOSURE

If the answer is "Yes" to a question below in Item 6I, complete a ***Customer Complaint / Arbitration / Civil Litigation DRP.***

Item 6I.

(1) Has the individual ever been the subject of a *municipal advisor-related* or *investment-related,* customer-initiated (written or oral) complaint that alleged that he or she was *involved* in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or dishonest, unfair or unethical practices, which:

(a) is still pending, or; ☐Yes ☐No

(b) was settled? ☐Yes ☐No

(2) Has the individual ever been the subject of a *municipal advisor-related* or *investment-related,* customer-initiated arbitration or civil litigation that alleged that he or she was *involved* in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or dishonest, unfair or unethical practices, which:

(a) is still pending, or; ☐Yes ☐No

(b) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or; ☐Yes ☐No

(c) was settled? ☐Yes ☐No

TERMINATION DISCLOSURE

If the answer is "Yes" to a question below in Item 6J, complete a ***Termination DRP****.*

Item 6J.
Has the individual ever voluntarily *resigned,* been discharged or permitted to *resign* after allegations were made that accused him or her of:

(1) violating *municipal advisor-related* or *investment-related* statutes, regulations, rules, or industry standards of conduct? ☐Yes ☐No

(2) fraud or the wrongful taking of property? ☐Yes ☐No

(3) failure to supervise in connection with *municipal advisor-related* or *investment-related* statutes, regulations, rules or industry standards of conduct? ☐Yes ☐No

FINANCIAL DISCLOSURE

Item 6K.
Within the past 10 years:

(1) has the individual made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition? ☐Yes ☐No

(2) based upon events that occurred while the individual exercised *control* over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition? ☐Yes ☐No

(3) based upon events that occurred while the individual exercised *control* over it, has a broker or dealer 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? ☐Yes ☐No

Item 6L.
Has a bonding company ever denied, paid out on, or revoked a bond for the individual? ☐Yes ☐No

JUDGMENT / LIEN DISCLOSURE

If the answer is "Yes" to a question below in Item 6M, complete a ***Judgment/Lien DRP****.*

Item 6M. Are there currently any unsatisfied judgments or liens against the individual? ☐Yes ☐No

Item 7 Signature

NOTE: In addition to completing Item 7, to the extent that the individual is a *non-resident*, a Form MA-NR completed and signed by the individual must be attached as an exhibit to this Form MA-I.

Complete either Subpart A or Subpart B:

By typing a name in the signature field, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature.

A. For *Municipal Advisory Firms* filing this form:

The *municipal advisory firm* has obtained and retained written consent from the individual that service of any civil action brought by, or notice of any *proceeding* before, the *SEC* or any *self-regulatory organization* in connection with the individual's *municipal advisory activities* may be given by registered or certified mail to the individual's address given in Item 1.

I, the undersigned, sign this Form MA-I on behalf of, and with the authority of, the *municipal advisory firm* that is filing this form. The *municipal advisory firm* and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-I, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA-I as a free and voluntary act.

Date: _____

By: _____
(*signature*)
Title: _____

B. For Natural Person *Municipal Advisors* (Sole Proprietors) filing this form:

The individual named below consents that service of any civil action brought by, or notice of any *proceeding* before, the *SEC* or any *self-regulatory organization* in connection with the individual's *municipal advisory activities* may be given by registered or certified mail to the individual's address given in Item 1.

I, the undersigned, certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-I, including exhibits and any other information submitted, are true and correct, and that I am signing this Form MA-I Execution Page as a free and voluntary act.

Date: _____

Full Legal Name of the Individual
Enter all the letters of each name and not initials or other abbreviations. If no middle name, enter NMN on that line.

_____	_____	_____	_____
Last Name	First Name	Middle Name	Suffix

Individual *CRD* No. (if any):_____

By: _____
(*signature*)

Warning: Intentional misstatements or omissions of fact constitute Federal criminal violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).12.

FORM MA-I

PART II:
DISCLOSURE REPORTING PAGES (DRPs)

CRIMINAL ACTION DISCLOSURE REPORTING PAGE (MA-I)

CRIMINAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL** or ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6A and 6B*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6A(1)(a)** ☐ **6A(1)(b)** ☐ **6A(2)(a)** ☐ **6A(2)(b)**

☐ **6B(1)(a)** ☐ **6B(1)(b)** ☐ **6B(2)(a)** ☐ **6B(2)(b)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Proceeding* on a Criminal Action DRP: Use a separate DRP for each event or *proceeding*. One event may result in more than one affirmative answer to Items **6A(1)(a), 6A(1)(b), 6A(2)(a), 6A(2)(b), 6B(1)(a), 6B(1)(b), 6B(2)(a) and/or 6B(2)(b).** Use this DRP to report all *charges*, including multiple counts of the same *charge,* arising out of the same event and filed in one criminal action. Separate cases arising out of the same event, and unrelated criminal actions, must be reported on separate DRPs.

How to Provide Court Documents: Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be attached as an exhibit if not previously submitted.

DRP On File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

CRIMINAL ACTION DRP – PART 2

1. Firm or Organization

A. Were *charge(s)* brought against a firm or organization over which the individual exercise(d) *control*?

☐ **Yes** ☐ **No**

B. If "Yes," provide the following information:

(1) Enter the firm or organization name: _____

(2) Was the firm or organization engaged in a *municipal advisor-related* or *investment-related* business? ☐ Yes ☐ No

(3) What was the individual's position, title, or relationship with the firm or organization?

_____

2. Court Where Formal *Charge(s)* Were Brought: (*File a separate Criminal Action DRP for charges brought in separate courts and/or separate cases in the same court. If brought in a foreign jurisdiction, provide all the information below in English.*)

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other : _____

A. Name of the Court:_____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

3. Event Disclosure Detail (Use this for both organizational and individual *charges*.)

A. Date First *Charged* (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Details of Event: Report all *charges* separately. For each *charge,* provide the following information.

(1) First *Charge*

(a) List the *charge/charge* description:

_____
_____
_____
_____
_____
_____

(b) Number of counts: ___

(c) Check the appropriate box: ☐ *Felony* ☐ *Misdemeanor*

(d) Plea for this *charge*:

_____

(e) (i) Is the *charge municipal advisor-related?* ☐ Yes ☐ No

(ii) If "Yes," what is the product type?

_____

(f) (i) Is the *charge investment-related?* ☐ Yes ☐ No

(ii) If "Yes," what is the product type?

_____

(g) (i) Amended *Charge*: Indicate if the original *charge* was amended or reduced:

☐ Yes ☐ No

(ii) If "Yes," provide the date the *charge* was amended or reduced (MM/DD/YYYY):

_____

Report each additional *charge* below:
_____
_____

C. *Felony Charge(s)*: Did any of the *charge*(s) within the event *involve* a *felony*? ☐ Yes ☐ No

4. Current Status of the Event: ☐ Pending ☐ On Appeal ☐ Final

5. Event Status Date (Complete unless status is pending) (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

6. On Appeal – Judicial Review: If you checked "On Appeal" in Item 4, to whom was the criminal action appealed? (*If brought in a foreign jurisdiction, provide all the information below in English.*)

☐ Federal Court
☐ Military Court
☐ State Court
☐ Foreign Country Court
☐ International Court
☐ Other (specify): _____

A. Name of the Court: _____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____

For Item 7: If you checked "Final" or "On Appeal" in Item 4, complete Item 7. For actions that are "Pending," skip to Item 8.

7. Disposition Disclosure Detail (For each *charge*, provide the following information):

(a) First *Charge*

(1) Disposition of the *Charge:*
Check all that apply.

☐ Acquitted
☐ Amended
☐ Convicted
☐ Deferred Adjudication
☐ Dismissed

☐ *Found* not guilty
☐ Pled guilty
☐ Pled nolo contendere
☐ Pled not guilty

☐ Pre-trial diversion/intervention
☐ Reduced
☐ Other (requires explanation) _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (requires explanation) _____

Explanation: *If more than one disposition is checked, and/or "Other" is checked, or the above otherwise does not adequately summarize the disposition of the charge, provide an explanation.*

_____
_____

_____

(2) Date (MM/DD/YYYY): _____

(3) Sentence/Penalty: Is a sentence or other penalty *ordered*? ☐ **Yes** ☐ **No**

If "Yes," list each type (*e.g.,* prison, jail, probation, community service, counseling, education, other - specify):

_____
_____
_____
_____

(4) Was or is the individual incarcerated in connection with this sentence? ☐ **Yes** ☐ **No**
If "Yes," provide the following details:

(i) Duration (length of the sentence): ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iii) End Date of Penalty (MM/DD/YYYY): _____ ☐ Not determined.

(iv) Is the sentence to be served concurrently with any other sentence? ☐ Yes ☐ No

If "Yes," indicate the end date of the concurrent sentence (MM/DD/YYYY):
_____

(v) Explanation (Optional):
_____
_____

(5) Monetary Penalty/Fine:

(i) Was a monetary penalty/fine imposed? ☐ Yes ☐ No
If "Yes," provide the following details in (ii) and (iii) below:

(ii) Total Penalty/Fine Amount: $_____

(iii) Was any portion suspended/reduced?

☐ Yes If "Yes," how much? $_____
☐ No

(iv) Final Amount: $_____

(v) Was the final amount paid in full?

☐ Yes If "Yes," date paid in full (MM/DD/YYYY):_____
☐ No

If "No," indicate the amount unpaid: $_____
And explain the circumstances:

_____

Report the disposition(s) of each additional *charge* below:

_____

_____

8. Summary of Circumstances (Optional): You may use this space to provide a brief summary of the circumstances leading to the *charge*(s), as well as the current status or final disposition, if any. Include the relevant dates when the conduct which was the subject of the *charge*(s) occurred, and any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (MA-I)

REGULATORY ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6C, 6D, 6E, 6F and 6G(1)*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6C(1)**	☐ **6D(1)(a)**	☐ **6E(1)**	☐ **6F**	☐ **6G(1)**
☐ **6C(2)**	☐ **6D(1)(b)**	☐ **6E(2)**		
☐ **6C(3)**	☐ **6D(1)(c)**	☐ **6E(3)**		
☐ **6C(4)**	☐ **6D(1)(d)**	☐ **6E(4)**		
☐ **6C(5)**	☐ **6D(1)(e)**	☐ **6E(5)**		
☐ **6C(6)**	☐ **6D(2)(a)**	☐ **6E(6)**		
☐ **6C(7)**	☐ **6D(2)(b)**	☐ **6E(7)**		
☐ **6C(8)**				

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Proceeding* on a Regulatory Action DRP: Use a separate DRP for each event or *proceeding*. One event may result in more than one affirmative answer to the above items. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

DRP On File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____

CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

REGULATORY ACTION DRP – PART 2

1. Regulatory Action was initiated by:

A. Select the Appropriate Item.
Select only one box below. A separate Regulatory Action DRP is required for each such regulator or other authority.

☐ *SEC*
☐ *CFTC*
☐ *Federal Banking Agency*
☐ National Credit Union Administration
☐ Other Federal Authority
☐ State
☐ *SRO*
☐ *Foreign Financial Regulatory Authority*
☐ Other: _____

B. Full name of the individual regulator (if not fully identified in Item 1-A.) or other authority that initiated the action. For a *foreign financial regulatory authority*, please provide the full name in English.

_____

2. Sanction(s) Sought
Select all that apply.

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil and Administrative Penalty(ies)/Fine(s)
☐ Denial
☐ Disgorgement
☐ Expulsion
☐ Injunction
☐ Prohibition
☐ Reprimand
☐ Requalification
☐ Rescission
☐ Restitution
☐ Revocation
☐ Suspension
☐ Undertaking

☐ **Other Sanction(s) Sought** (list each such additional sanction):

_____
_____
_____

3. Date Initiated (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

4. Regulatory Action was brought in (*if brought in a foreign jurisdiction, provide all the information below in English*):

A. Name of the Administrative *Proceeding*, *Commission*/Agency Hearing, or Other Regulatory *Proceeding* or Forum: _____

B. Location of the *Proceeding* / Hearing:

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Number: _____

5. **Employing Firm:** Provide the full legal name of the individual's employing firm, if any, when the activity occurred which led to the regulatory action (if there was no such employing firm at that time, enter "None"). Enter the employing firm's MA and *CRD* registration numbers below, if any.

A. Employing Firm: _____

B. *Municipal Advisor* Registration Number, if any: _____

C. *CRD* Number, if any: _____

6. **A. Principal Product Type**
Check appropriate item.

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**
_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:
_____
_____

7. **Allegations:** Describe the allegations related to this regulatory action. (The response must fit within the space provided.)
_____
_____
_____
_____
_____
_____

8. **Current Status:** ☐ Pending ☐ On Appeal ☐ Final

9. Pending: If you checked "Pending" in Item 8, provide the following information.

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

10. On Appeal – Administrative or Judicial Review of the Regulatory Action: If the individual appealed, provide the following information.

A. Name of Regulator or Court Action Appealed To: *Provide the name of the US regulator (i.e., the SEC, an SRO, other), federal court, state court or state regulator, or a foreign or international court or regulator to whom the individual appealed. If brought in a foreign jurisdiction, provide all the information below in English.*

_____

B. Location of the Regulator or Judicial Court to Whom the Individual Appealed:

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

F. Appeal Details (including status):

_____

_____

_____

_____

_____

_____

G. Limitation or Restrictions: Are there any limitations or restrictions currently in effect while on appeal?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

If you checked "Final" or "On Appeal" in Item 8, complete Items 11 through 13, and consider Item 14. For actions that are "Pending," skip to Item 14.

11. A. Resolution: How was the matter resolved?
Check all the applicable boxes that reflect the most recent resolution of the matter by a regulator or a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 11-B which part is currently on appeal.

☐ Acceptance, Waiver & Consent (AWC)
☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ Judgment Rendered
☐ *Order*
☐ Settled
☐ Stipulation and Consent
☐ Withdrawn
☐ Other (requires explanation)

☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ad initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other (requires explanation)

B. Explanation: *If more than one box in Item 11-A is checked, or Other is checked, or Item 11-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if the individual appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____

_____

_____

_____

_____

_____

C. *Order:* If *Order* is checked above in Item 11-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐ Yes ☐ No

12. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator (reviewing a decision by an SRO or an Administrative Law Judge) or a court provided its resolution.*)

If not exact, provide explanation:

_____

_____

13. Resolution Detail

A. Sanction(s): Was/were any Sanction(s) *Ordered*? ☐ Yes
☐ No, none were *ordered.*

B. If "Yes," check each individual sanction below that was *ordered*:

☐ Bar (Permanent)	☐ Disgorgement*	☐ Restitution*
☐ Bar (Temporary / Time Limited)	☐ Expulsion	☐ Requalification
☐ Cease and Desist	☐ Injunction	☐ Revocation
☐ Censure	☐ Prohibition	☐ Suspension
☐ Civil and Administrative Penalty(ies)/Fine(s)*	☐ Reprimand	☐ Undertaking
☐ Denial	☐ Rescission	

*** Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?

☐ Yes ☐ No

If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanction(s) *Ordered* (list each such additional sanction):**

_____

_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 13-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 13-B. above, check the appropriate box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____

_____

_____

_____

_____

_____

If, in the above action, the individual received one or more bars from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____

_____

(b) ***Enjoined***

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____

_____

_____

_____

_____

_____

If, in the above action, the individual received one or more injunctions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____

_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____
_____
_____

If, in the above action, the individual received one or more suspensions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____
_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction?

☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____
_____

(c) Was the condition satisfied? ☐ Yes ☐ No

(1) If "Yes," provide the date (MM/DD/YYYY): _____
(2) If "No," explain the circumstances:

_____
_____

If, in the above action, the individual received one or more requalifications in connection with registration capacities, associations, and/or other activities, and the terms specify different time periods,
report the additional details below:

_____

(3) Monetary Sanction(s): If you indicated in Item 13-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against the individual:

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____
_____

14. Summary of Circumstances (Optional): You may use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____
_____
_____
_____
_____
_____

INVESTIGATION DISCLOSURE REPORTING PAGE (MA-I)

INVESTIGATION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details **for an affirmative response to *Question 6G(2)* on Form MA-I.**

Check the question(s) to which this DRP pertains:

☐ **6G(2) *Investigation* that could result in a "Yes" answer to any part of:**
Check all that apply.

- ☐ **6A (Criminal Action Disclosure – *Felony*)**
- ☐ **6B (Criminal Action Disclosure – *Misdemeanor*)**
- ☐ **6C (Regulatory Action Disclosure – *SEC* or *CFTC*)**
- ☐ **6D (Regulatory Action Disclosure – Other Federal, State, Foreign)**
- ☐ **6E (Regulatory Action Disclosure – *SRO*)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Investigation* on an *Investigation* DRP: Complete this *Investigation* DRP only if you are answering "yes" to Item 6G(2), *i.e.,* that the individual has been notified, in writing, that he or she is currently the subject of an *investigation*. (If you answered "yes" to Item 6G(1), *i.e.,* that the individual has been notified in writing that he or she is currently the subject of a regulatory complaint or *proceeding,* complete the Regulatory Action DRP.) Use a separate *Investigation* DRP for each event or *investigation.* One event may result in more than one *investigation.* If an event gives rise to more than one authority *investigating* the individual, provide the details of each *investigation* on a separate DRP.

***Investigation* Concluded Without Formal Action:** If the individual has been notified that the *investigation* has been concluded without formal action, complete items 4 and 5 of this DRP to update.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

INVESTIGATION DRP – PART 2

1. ***Investigation* was initiated by:**

   A. **Notice Received From (select appropriate item):**

   Select only one box below. A separate *Investigation* DRP is required for each notice received from a regulator or other authority.

   ☐ **Criminal *Investigation***

   ☐ Federal ☐ Military ☐ State ☐ Foreign Country ☐ International Authority
   ☐ Other: _____

   ☐ **Regulatory or Other Civil Authority *Investigation***

   ☐ *SEC* ☐ State ☐ *Foreign Financial Regulatory Authority*
   ☐ *CFTC* ☐ *SRO* ☐ Other Foreign Authority
   ☐ Other Federal Authority
   ☐ Other: _____

   B. **Full name of the criminal, regulatory or other civil authority that initiated the *investigation* (unless *SEC* or *CFTC* is checked above).** For a foreign *investigation*, please provide the full name in English.

   _____

2. **Notice Date** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   _____

   _____

3. **Description:**

   A. **Does the individual know the nature of the *investigation*?** ☐ **Yes** ☐ **No**

   B. **If the answer is "Yes," describe the nature of the *investigation:***

   _____

   _____

4. **Product Type(s):** (Select all that apply.)

   ☐ No Product

   ☐ Annuity – Charitable
   ☐ Annuity – Fixed
   ☐ Annuity – Variable
   ☐ Banking Product (other than CD)
   ☐ CD
   ☐ Commodity Option
   ☐ Direct Investment – DPP & LP Interest
   ☐ Equipment Leasing
   ☐ Equity Listed (Common & Preferred Stock)
   ☐ Equity OTC
   ☐ Futures – Commodity
   ☐ Futures – Financial
   ☐ Index Option
   ☐ Oil & Gas
   ☐ Options
   ☐ Penny Stock
   ☐ Prime Bank Instrument
   ☐ Promissory Note
   ☐ Real Estate Security
   ☐ Security Futures

☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Product Type:**

_____

5. **Current Status:** Is the *investigation* pending? ☐ Yes **If "Yes," skip to Item 7.** ☐ No **If "No," complete Item 6.**

6. **Resolution Details:**

A. **Date Closed/Resolved** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation
If not exact, provide explanation:

_____

_____

B. **How was the *investigation* resolved?** (select appropriate item):

☐ Closed Without Further Action ☐ Closed - Regulatory Action Initiated
☐ Other (Explain):

_____

_____

If you checked "Closed - Regulatory Action Initiated" in Item 6-B, you must promptly complete and file an accurate and up-to-date Regulatory Action DRP (MA-I).

7. **Summary of Circumstances (Optional):** You may use this space to provide a brief summary of the circumstances leading to the *investigation*, as well as the current status or final disposition and/or finding(s), if any. Include any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

TERMINATION DISCLOSURE REPORTING PAGE (MA-I)

TERMINATION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question 6J*** on Form MA-I;

Check the question(s) to which this DRP pertains:

☐ **6J(1)** ☐ **6J(2)** ☐ **6J(3)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report a Termination on a Termination DRP: One termination may result in more than one affirmative answer to the above items. Use only one Termination DRP to report details about the same termination. Use a separate Termination DRP for each termination reported.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

TERMINATION DRP – PART 2

1. **Name of Employing Firm:**_____

   MA Registration Number, if any: _____ ***CRD* Number, if any:** _____

2. **Termination Type:** ☐ Discharged ☐ Permitted to *Resign* ☐ Voluntary *Resignation*

3. **Termination Date** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation
   If not exact, provide explanation:

   _____

   _____

4. **Allegation(s):**

   _____

   _____

   _____

   _____

   _____

   _____

5. **Product Type(s):** (Select all that apply.)

   ☐ No Product

   ☐ Annuity – Charitable
   ☐ Annuity – Fixed
   ☐ Annuity – Variable
   ☐ Banking Product (other than CD)
   ☐ CD
   ☐ Commodity Option
   ☐ Debt – Asset Backed
   ☐ Debt – Corporate
   ☐ Debt – Government
   ☐ Debt – Municipal
   ☐ Derivative
   ☐ Direct Investment – DPP & LP Interest
   ☐ Equipment Leasing
   ☐ Equity Listed (Common & Preferred Stock)
   ☐ Equity OTC
   ☐ Futures – Commodity
   ☐ Futures – Financial
   ☐ Index Option
   ☐ Insurance
   ☐ Investment Contract
   ☐ Money Market Fund
   ☐ Mutual Fund
   ☐ Oil & Gas
   ☐ Options
   ☐ Penny Stock
   ☐ Prime Bank Instrument
   ☐ Promissory Note
   ☐ Real Estate Security
   ☐ Security Futures
   ☐ Security-based Swap
   ☐ Swap
   ☐ Unit Investment Trust
   ☐ Viatical Settlement

   ☐ **Other Product Type:**

   _____

6. **Summary of Circumstances (Optional):** You may use this space to provide a brief summary of the circumstances leading to the termination, including any relevant information. The information must fit within the space provided.

   _____

   _____

   _____

   _____

   _____

   _____

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (MA-I)

JUDGMENT / LIEN DISCLOSURE DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for an affirmative response to ***Question 6M*** on Form MA-I.

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or a Judgment/Lien on a Judgment/Lien DRP: If multiple, unrelated events result in the same affirmative answer, details relating to each separate event must be provided on a separate Judgment/Lien DRP.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

JUDGMENT / LIEN DISCLOSURE DRP – PART 2

1. **Judgment/Lien Amount:** $_____

2. **Judgment/Lien Holder:** _____

3. **Judgment/Lien Type:** ☐ Civil ☐ Tax

4. **Date Filed** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   _____

   _____

5. **Formal Action Was Brought In:** (*If brought in a foreign jurisdiction, provide all the information below in English*):

   ☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

   ☐ Other : _____

   A. **Name of the Court:**_____

   B. **Location of the Court**

   Street Address: _____
   City or County: _____ State/Country: _____
   Postal Code: _____

   C. **Docket/Case Name:** _____

   D. **Docket/Case Number:**_____

6. **Is Judgment/Lien outstanding?** ☐ Yes **If "Yes," skip to item 8.**
   ☐ No **If "No," complete item 7.**

7. **If Judgment/Lien is not outstanding, provide:**

   A. **Status Date** (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   _____

   _____

   B. **How was matter resolved? (select appropriate item):**

   ☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

   ☐ Other (provide explanation):

   _____

8. **Summary of Circumstances (Optional):** You may use this space to provide a brief summary of the circumstances leading to the action as well as the current status or final disposition. Include any other relevant information. The information must fit within the space provided.

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (MA-I)

CIVIL JUDICIAL ACTION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6H*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6H(1)(a)** ☐ **6H(1)(b)** ☐ **6H(1)(c)** ☐ **6H(2)**

Is this DRP an amendment filed for the individual that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report an Event or *Proceeding* on a Civil Judicial Action DRP: Use a separate DRP for each event or *proceeding*. One event may result in more than one affirmative answer to Item 6H. Separate cases arising out of the same event, and unrelated civil judicial actions, must be reported on separate DRPs; if they are later consolidated into a single civil judicial action, the consolidated action can be reported on one DRP.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____

Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

CIVIL JUDICIAL ACTION DRP – PART 2

1. Court Action initiated by:

A. Select the Appropriate Item(s).
Check all that apply.

☐ *SEC* ☐ State ☐ *Foreign Financial Regulatory Authority*
☐ *CFTC* ☐ *SRO* ☐ *Municipal Advisory Firm*
☐ Other Federal Authority ☐ Commodities Exchange ☐ Private Plaintiff

☐ Other: _____

B. Plaintiff(s): Enter the full name(s) of the plaintiff(s), unless only *SEC* and/or *CFTC* is/are checked above. For a *foreign financial regulatory authority*, please provide the full name in English.

_____
_____
_____
_____

Were all plaintiffs fully identified in the space provided? ☐ Yes ☐ No

2. Defendant(s):

A. Enter the full name(s) of the defendant(s). For foreign defendant(s), please provide the full name(s) in English:

_____
_____
_____
_____
_____
_____

B. Is the individual a named defendant? ☐ Yes ☐ No If "No," describe how this action involves the individual:

_____
_____
_____
_____
_____
_____

3. Sanction(s) or Relief Sought:
Check appropriate items.

☐ Bar (Permanent) ☐ Exemption ☐ Requalification
☐ Bar (Temporary / Time Limited) ☐ Expulsion ☐ Rescission
☐ Cease and Desist ☐ Injunction ☐ Restitution
☐ Censure ☐ Money Damage(s) (Private/Civil Complaint) ☐ Restraining *Order*
☐ Civil /Administrative Penalty(ies)/Fine(s) ☐ Revocation

☐ Denial ☐ Prohibition ☐ Suspension
☐ Disgorgement ☐ Reprimand ☐ Undertaking

☐ **Other Sanction(s) or Relief Sought:**

_____
_____
_____
_____
_____

4. A. **Filing Date of Court Action** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

B. **Date Notice/Process was served** (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

5. **Formal Action was brought in** (*If brought in a foreign jurisdiction, provide all the information below in English*):
Check the appropriate box.

☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

☐ Other : _____

A. **Name of the Court:**_____

B. **Location of the Court**

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. **Docket/Case Name:** _____

D. **Docket/Case Number:**_____

6. **Employing Firm:** Provide the full legal name of the individual's employing firm, if any, when the activity occurred which led to the civil judicial action. (If there was no such employing firm at that time, enter "None"). Enter the employing firm's MA and *CRD* registration numbers below, if any.

A. **Employing Firm:** _____

B. ***Municipal Advisor* Registration Number, if any:** _____

C. *CRD* Number, if any: _____

7. A. Principal Product Type:
Check appropriate item.

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Principal Product Type (specify):**

_____

B. Other Product Types? ☐ Yes ☐ No If "Yes," describe each additional product type:

_____

_____

8. Allegations: Describe the allegations related to this civil action. (The response must fit within the space provided.)

_____

_____

_____

_____

_____

_____

9. Current Status: ☐ Pending ☐ On Appeal ☐ Final

10. Pending: If you checked "Pending" in Item 9, provide the following information:

A. Date Served: The date that notice or other process was served (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

B. Limitation or Restrictions: Are there any limitations or restrictions currently in effect?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

11. On Appeal – Judicial Review: If the individual appealed, provide the following information. (*If brought in a foreign jurisdiction, provide all the information below in English.*):

A. Action Appealed to: (*Provide the name of the federal, state, foreign, or international court to whom the individual appealed.*):

_____

B. Location of the Court:

Street Address: _____

City or County: _____ State/Country: _____

Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

F. Appeal Details (including status):

_____

_____

_____

_____

G. Limitation or Restrictions: Are there any limitations or restrictions currently in effect while on appeal?

☐ Yes ☐ No

If the answer is "Yes," provide details:

_____

_____

If you checked "Final" or "On Appeal" in Item 9, complete Items 12 through 14. For Pending Actions, skip to Item 15.

12. A. Resolution: How was the action resolved?

Check all the applicable boxes that reflect the most recent resolution of the action by a court, whether or not any part of the resolution is on appeal. If any part of the resolution is on appeal, identify in Item 12-B which part is currently on appeal.

☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ Judgment Rendered
☐ Stipulation and Consent
☐ Opinion
☐ *Order*
☐ Settled
☐ Withdrawn

☐ Other: _____

☐ Appealed
- ☐ Affirmed
- ☐ Vacated Nunc Pro Tunc / ad initio
- ☐ Vacated & Returned For Further Action
- ☐ Vacated / Final
- ☐ Other: _____

B. Explanation: *If more than one box in Item 12-A is checked or Item 12-A otherwise does not adequately summarize the type of resolution, provide an explanation. For example, if the individual appealed all or part of a resolution by the regulator or court, indicate what is being appealed.*

_____
_____
_____

C. ***Order:*** If *Order* is checked above in Item 12-A, does the *order* constitute a final *order* based on violations of any laws or regulations that prohibit fraudulent, or deceptive conduct? ☐ Yes ☐ No

13. Resolution Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation
(*For a resolution that is being appealed in part, the date to be provided should be the date on which the regulator or court provided its resolution.*)

If not exact, provide explanation:

_____
_____

14. Resolution Detail

A. Sanctions(s): Was/were any Sanction(s) *Ordered* or Relief Granted?

☐ Yes
☐ No, none were *ordered* or granted.

B. If "Yes," check each individual sanction *ordered* and/or relief granted below:

☐ Bar (Permanent)
☐ Bar (Temporary / Time Limited)
☐ Cease and Desist
☐ Censure
☐ Civil /Administrative Penalty(ies)/Fine(s)*
☐ Denial
☐ Disgorgement*
☐ Exemption
☐ Expulsion
☐ Injunction
☐ Money Damage(s) (Private/Civil Complaint)*
☐ Prohibition
☐ Reprimand
☐ Requalification
☐ Rescission
☐ Restitution*
☐ Restraining *Order*
☐ Revocation
☐ Suspension
☐ Undertaking

*** Monetary Sanction(s):** Were one or more sanctions *ordered* that require a monetary payment?
☐ Yes ☐ No

If "Yes," enter the total amount *ordered*: $_____

☐ **Other Sanctions *Ordered* or Relief Granted** (list each such additional sanction or relief):

_____
_____
_____
_____

C. Sanction Detail (Provide the details of the following specific sanctions, if checked above in Item 14-B.)

(1) Barred, *Enjoined*, or Suspended: If you checked one or more of these sanctions in Item 14-B. above, check the appropriate box(es) below and provide the corresponding information.

(a) Barred

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____
_____
_____

If, in the above action, the individual received one or more bars from registration capacities, associations, and/or other activities, and the terms specify different time periods,
report the additional details below:

_____
_____

(b) *Enjoined*

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____

If, in the above action, the individual received one or more injunctions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____
_____

(c) Suspended

(i) Duration (length of time):

☐ Permanent (not limited by length of time).
☐ Temporary / Time Limited. Specify the: ☐ Days ___ ☐ Months ___ ☐ Years ___

(ii) Start Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iii) End Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

(iv) Description: Provide remaining details, including any explanation boxes checked above, and the registration capacities affected (General Securities Principal, Financial Operations Principal, etc.):

_____
_____
_____
_____

If, in the above action, the individual received one or more suspensions from registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____
_____

(2) Requalification: Was requalification by examination, retraining, or other process a condition of a sanction?

☐ Yes ☐ No

If "Yes," provide:

(a) Length of time given to requalify, retrain, or complete other process:

☐ No time period is specified.
☐ Time period is specified: ☐ Days ___ ☐ Months ___ ☐ Years ___

(b) Type of examination, retraining, or other process required:

_____

_____

(c) Was the condition satisfied? ☐ Yes ☐ No

If "Yes," provide the date (MM/DD/YYYY): _____
If "No," explain the circumstances:

_____

_____

If, in the above action, the individual received one or more requalifications in connection with registration capacities, associations, and/or other activities, and the terms specify different time periods, report the additional details below:

_____

_____

(3) Monetary Sanction(s): If you indicated in Item 14-B above that one or more monetary sanctions were *ordered*, provide the following information.

(a) Total Amount *Ordered*: $_____

(b) Portion levied against the individual:

(i) Amount *Ordered*: $_____

(ii) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(iii) Final Amount: $_____

(iv) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____

_____

15. Summary of Circumstances (Optional): You may use this space to provide a brief summary of the circumstances leading to the action, allegation(s), finding(s) and disposition(s), if any. Include any relevant information on the current action status, and on any terms, conditions, and dates not already provided above, and any other relevant information. The information must fit within the space provided.

_____

_____

_____

_____

_____

_____

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DISCLOSURE REPORTING PAGE (MA-I)

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DRP – PART 1

This **Disclosure Reporting Page (DRP MA-I)** is an ☐ **INITIAL or** ☐ **AMENDED** response to report details for affirmative response(s) to ***Question(s) 6I*** on Form MA-I.

Check the question(s) to which this DRP pertains:

☐ **6I(1)(a)** ☐ **6I(2)(a)** ☐ **6I(2)(c)**
☐ **6I(1)(b)** ☐ **6I(2)(b)**

Is this DRP an amendment that seeks to remove a previously filed DRP concerning the individual from the record? ☐ Yes ☐ No

If "Yes," the reason the DRP should be removed is:

☐ The event or *proceeding* was resolved in the individual's favor

☐ The DRP was filed in error. Explain the circumstances:

_____

_____

How to Report a Matter or a *Proceeding* on this DRP: Use a separate DRP for each matter or *proceeding*. One matter may result in more than one affirmative answer to the above items. Use a single DRP to report details relating to a particular matter (i.e., a customer complaint, arbitration, *CFTC* reparation, or civil litigation). If an event gives rise to separate *proceedings* by more than one regulator or other authority, or other plaintiff, provide details for each *proceeding* on a separate DRP. Separate cases arising out of the same matter, and unrelated civil judicial actions, must be reported on separate DRPs; if they are later consolidated into a single civil judicial action, the consolidated action can be reported on one DRP.

DRP on File for This Event: Is an accurate and up-to-date DRP containing the information regarding the individual required by this DRP already on file (a) in the *IARD* or *CRD* system (with a Form ADV, BD, or U4), or (b) in the *SEC's* EDGAR system (with a Form MA or Form MA-I)?

Note: The filer may identify a DRP filed by the individual directly, or filed by another SEC-registrant about the individual as an associated person.

☐ **Yes**

If the answer is "Yes," provide the applicable information indicated below that identifies where the DRP may be found.

☐ **1. Form ADV, BD, or U4 Filing:** For a DRP filed on the *IARD* or *CRD* system with one of these forms, provide the following information:

Name on Registration: _____
CRD No.: _____ Disclosure Occurrence No.: _____

☐ **2. Form MA Filing:** For a DRP filed on EDGAR with a Form MA, provide the following information:

Name on Registration: _____
MA Registration Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **3. Form MA-I Filing:** For a DRP filed on EDGAR with a Form MA-I, provide the following information:

Name of Individual: _____
MA-I File Number: _____
Date of filing that contains the DRP (MM/DD/YYYY): _____
Accession number of the filing: _____

☐ **No**

If the answer is "Yes," no other information on this DRP (other than set forth above) must be provided. If the answer is "No," complete Part 2 of this DRP.

NOTE: The completion of all or any part of this form does not relieve the individual or any *municipal advisor* with which the individual is associated of the obligation to update any relevant Form MA or *IARD* or *CRD* records.

CUSTOMER COMPLAINT / ARBITRATION / CIVIL LITIGATION DRP – PART 2

Disclosure Instructions and the Individual's Status: You must indicate the individual's status in Items II and III below:

I. All Matters: Items 1-6. Complete Items 1-6 for all matters, whether or not the individual is named as a party, including:

A. Customer complaints, arbitrations/*CFTC* reparations and civil litigation in which the individual is not named as a party, as well as,

B. Arbitrations/*CFTC* reparations and civil litigation in which the individual is named as a party.

II. If the individual is not named as a party, check here: ☐ And complete Items 7-11.

A. If the matter *involves* a customer complaint, or an arbitration/*CFTC* reparation or civil litigation in which the individual is not named as a party, complete Items 7-11 as appropriate.

B. If a customer complaint has evolved into an arbitration/*CFTC* reparation or civil litigation, amend the existing Disclosure Form by completing Items 9 and 10.

III. If the individual is named as a party, check here: ☐ And check the appropriate boxes below:

A. Arbitration/*CFTC* Reparation: If the matter *involves* an arbitration/*CFTC* reparation in which the individual is a named party, **check here: ☐ And complete Items 12-16, as appropriate.**

B. Civil Litigation: If the matter *involves* a civil litigation in which the individual is a named party, **check here: ☐ And complete Items 17-23.**

IV. Summary of the Circumstances: Item 24. This is an optional space and applies to all event types (i.e., customer complaint, arbitration/*CFTC* reparation, civil litigation).

Complete Items 1-6 for all matters (i.e., customer complaints, arbitrations/*CFTC* reparations, civil litigation).

1. Customer Name(s):_____

2. A. Customer(s) State of Residence or domicile, if applicable:

_____

B. Does/do the customer(s) have other state(s) of residence or domicile, if applicable? ☐ Yes ☐ No
If "Yes," provide the information:

_____

3. Employing Firm: Provide the full legal name of the individual's employing firm, if any, when activities occurred which led to the customer complaint, arbitration, *CFTC* reparation or civil litigation. (If there was no such employing firm at that time, enter "None"). Enter the employing firm's MA and *CRD* registration numbers below, if any.

A. Employing Firm: _____

B. *Municipal Advisor* Registration Number, if any: _____

C. *CRD* Number, if any: _____

4. Product Type(s): (select all that apply)

☐ No Product

☐ Annuity – Charitable
☐ Annuity – Fixed
☐ Annuity – Variable
☐ Banking Product (other than CD)
☐ CD
☐ Commodity Option
☐ Debt – Asset Backed
☐ Debt – Corporate
☐ Debt – Government
☐ Debt – Municipal
☐ Derivative
☐ Direct Investment – DPP & LP Interest
☐ Equipment Leasing
☐ Equity Listed (Common & Preferred Stock)
☐ Equity OTC
☐ Futures – Commodity
☐ Futures – Financial
☐ Index Option
☐ Insurance
☐ Investment Contract
☐ Money Market Fund
☐ Mutual Fund
☐ Oil & Gas
☐ Options
☐ Penny Stock
☐ Prime Bank Instrument
☐ Promissory Note
☐ Real Estate Security
☐ Security Futures
☐ Security-based Swap
☐ Swap
☐ Unit Investment Trust
☐ Viatical Settlement

☐ **Other Product Type?** ☐ Yes ☐ No If "Yes," describe each additional product type:

_____
_____

5. Allegation(s): Describe the allegation(s) and provide a brief summary of events related to the allegation(s), including dates when activities leading to the allegation(s) occurred:

_____
_____
_____
_____
_____
_____

6. Alleged Compensatory Damage(s)

A. Do the allegations include any amount(s) for compensatory damage(s)? ☐ Yes ☐ No

B. If "Yes," indicate the amount: $_____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

<u>If the Individual Is Not a Named Party</u>: If the matter *involves* a customer complaint, arbitration/*CFTC* reparation or civil litigation in which the individual is not named as a party, complete items 7-11 as appropriate.

<u>If the Individual Is a Named Party</u>: Report in Items 12-16, or 17-23, as appropriate, only arbitrations/*CFTC* reparations or civil litigation in which the individual is named as a party.

7. A. Is this an oral complaint? ☐ Yes ☐ No

B. Is this a written complaint? ☐ Yes ☐ No

C. Is this an arbitration/*CFTC* reparation or civil litigation? ☐ Yes ☐ No

If "Yes," provide:

(1) Arbitration/reparation forum or court name: _____

(2) Location of the Forum or Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

(3) Docket/Case Name: _____

(4) Docket/Case Number: _____

(5) Filing date of arbitration/*CFTC* reparation or civil litigation (MM/DD/YYYY):_____

D. Date received by/served on firm (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

8. Pending: Is the complaint, arbitration/*CFTC* reparation or civil litigation pending? ☐ Yes ☐ No
If "No," complete item 9.

9. Final: If the complaint, arbitration/*CFTC* reparation or civil litigation is not pending, provide status:

☐ Closed/No Action ☐ Withdrawn ☐ Denied ☐ Settled
☐ Arbitration Award/Monetary Judgment (for claimants/plaintiffs)
☐ Arbitration Award/Monetary Judgment (for respondents/defendants)
☐ Evolved into Arbitration/*CFTC* reparation (individual is a named party): **Complete Items 12-16.**
☐ Evolved into Civil litigation (individual is a named party): **Complete Items 17-23.**

Status:

<u>If the Individual Is Not a Named Party</u>: If the status is arbitration/*CFTC* reparation in which the individual is not a named party, provide details in Item 7C.

<u>If the Individual Is a Named Party</u>: If the status is arbitration/*CFTC* reparation in which the individual is a named party, complete Items 12-16. If the status is civil litigation in which the individual is a named party, complete Items 17-23.

10. Status Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

11. Settlement/Award/Monetary Judgment:

A. Is there a Settlement/Award/Monetary Judgment? ☐ Yes ☐ No
If "Yes," provide the details below in Item 11-B. and Item 11-C.

B. Settlement/Award/Monetary Judgment Amount: $_____

C. Was the individual required to pay any portion of the total amount? ☐ Yes ☐ No

If "Yes," indicate:

(1) The individual's contribution amount: $_____

(2) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(3) Final Amount: $_____

(4) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____

_____

If the matter *involves* an arbitration or *CFTC* reparation in which the individual is a named respondent, complete Items 12-16, as appropriate.

12. A. Arbitration/*CFTC* reparation claim filed with (*FINRA*, AAA, *CFTC*, etc.):

_____

B. Location of the Forum

Street Address: _____
City or County: _____ State/Region: _____
Country: _____ Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date notice/process was served (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

13. Pending: Is arbitration/*CFTC* reparation pending? ☐ Yes ☐ No
If "No," complete Items 14 and 15.

14. Final: If the arbitration/*CFTC* reparation is not pending, what was the disposition?

☐ Award to the Individual (Agent/Representative)
☐ Award to Customer
☐ Denied
☐ Dismissed
☐ Judgment (other than monetary)
☐ No Action
☐ Settlement that includes a monetary payment to customer
☐ Settlement without a monetary payment to customer
☐ Withdrawn

☐ Other:_____

15. Disposition Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

16. Monetary Compensation Details (If you checked "Award to Customer," or "Settlement that includes a monetary payment to customer" in Item 14, or otherwise a payment of money must be made to the customer, provide the following information.)

A. Total Amount: $_____

B. The Individual's Portion: Was the individual required to pay any portion of the total amount?
☐ **Yes** ☐ **No**

C. If you answered "Yes," to Item 16-B, indicate:

(1) The individual's contribution amount: $_____

(2) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(3) Final Amount: $_____

(4) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:
_____
_____

If the matter *involves* a civil litigation in which the individual is a defendant, complete items 17-23.

17. Court in which case was filed (*if brought in a foreign jurisdiction, provide all the information below in English*):

☐ Federal Court ☐ Military Court ☐ State Court ☐ Foreign Court ☐ International Court

☐ Other : _____

A. Name of the Court:_____

B. Location of the Court

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

18. Date received by/served on firm (MM/DD/YYYY):_____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

19. Current Status of the Civil Litigation:

☐ **Pending (Skip to Item 24.)**
☐ **On Appeal (Complete Items 20-23; and consider Item 24.)**
☐ **Final (Complete Items 20-22; and Item 23 if applicable; and consider Item 24.)**

20. Resolution:

☐ Denied
☐ Dismissed
☐ Judgment (other than monetary)
☐ Monetary Judgment to the Individual (Agent/Representative)
☐ Monetary Judgment to Customer
☐ No Action
☐ Settlement that includes a monetary payment to customer
☐ Settlement without a monetary payment to customer
☐ Withdrawn

☐ Other:

_____

_____

21. Disposition Date (MM/DD/YYYY):_____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

22. Monetary Compensation Details (If you checked "Monetary Judgment to Customer" or "Settlement that includes a monetary payment to customer" in Item 20, or otherwise a payment of money must be made to the customer, provide the following information.)

A. Total Amount: $_____

B. Was the individual required to pay any portion of the total amount? ☐ **Yes** ☐ **No**

C. If you answered "Yes" to Item 22-B, indicate:

(1) The individual's contribution amount: $_____

(2) Was any portion waived?

☐ Yes
☐ No

If "Yes," how much? $_____

(3) Final Amount: $_____

(4) Was final amount paid in full?

☐ Yes
☐ No

If "Yes," date paid in full (MM/DD/YYYY):_____
If "No," explain the circumstances:

_____
_____

23. On Appeal – Judicial Review: If the individual appealed, provide the following information. (*If brought in a foreign jurisdiction, provide all the information below in English*):

A. Action Appealed to: (*Provide the name of the federal, military, state, foreign, or international court to which the individual appealed.*)

_____

B. Location of the Court:

Street Address: _____
City or County: _____ State/Country: _____
Postal Code: _____

C. Docket/Case Name: _____

D. Docket/Case Number: _____

E. Date Appeal filed (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____

F. Appeal Details (including status):

_____
_____
_____
_____
_____

24. Summary of the Circumstances (Optional). You may use this space to provide a brief summary of the circumstances leading to the customer complaint, arbitration/*CFTC* reparation and/or civil litigation as well as the current status or final disposition(s). The information must fit within the space provided.

_____
_____
_____
_____

Form MA-NR

DESIGNATION OF U.S. AGENT FOR SERVICE OF PROCESS FOR NON-RESIDENTS

Please read the General Instructions for this form and other forms in the MA series, as well as its subsection, "General Instructions to Form MA-NR," before completing this form. All *italicized* terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

Purpose: Each *non-resident municipal advisor, non-resident* general partner or *non-resident managing agent* of a *municipal advisor*, and *non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf must execute a written irrevocable consent and power of attorney on Form MA-NR to appoint an agent in the United States, upon whom may be served any process, pleadings, or other papers in any action brought against such *non-resident municipal advisor*, general partner, *managing agent* or natural person associated with the *municipal advisor*.

Instructions to Complete this Form:

1. This power of attorney, consent, stipulation, and agreement shall be signed and notarized by the *non-resident municipal advisor*, *non-resident* general partner or *managing agent*, or *non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf, as applicable, in Section A of Form MA-NR. The form must be signed by the authorized agent for service of process in the United States in Section B of Form MA-NR.

2. The name of each *person* who signs this Form MA-NR must be typed or printed beneath the *person*'s signature.

3. Any *person* who occupies more than one of the specified positions must indicate each capacity in which the *person* is signing the form.

4. Section C Documentation: If any *person* signs this form pursuant to a written authorization – *e.g.*, a board resolution or power of attorney – an accurate and complete copy of each such document must be included with the Form MA-NR.

5. Attachment to Form MA or Form MA-I:

   a) Complete and execute a printed Form MA-NR, including signatures and notarization. Then scan the original completed and executed form to create a PDF file. Please consult the instructions for uploading PDF files into EDGAR, found in the EDGAR Filer's Manual, available at http://www.sec.gov/info/edgar.shtml.

   b) If any other documents are required, as specified in Section C of the form, include these documents in the same PDF file or create a separate one(s).

   c) Attach the PDF file(s) to the Form MA or Form MA-I, as appropriate, where prompted in the form.

Power of Attorney, Consent, Stipulation, and Agreement

A. Designation and Appointment of Agent for Service of Process

Identify the agent for service of process for the *non-resident municipal advisor*, for the *non-resident* general partner or *managing agent* of a *municipal advisor*, or for the *non-resident* natural person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf. Fill in all lines.

1. Name of United States *person* designated and appointed as agent for service of process.
   Enter all the letters of each name and not initials or other abbreviations.
   (*If no middle name, enter NMN on that line.*)

   _____
   (name)

2. Mailing Address of United States *person* designated and appointed as agent for service of process.
   Do not use a P.O. Box. Do not use a foreign address.

   _____
   (number and street; office suite or room number)

   _____ _____ _____
   (city) (state) (U.S. postal code: zip+4)

   _____
   (area code) (telephone number)

By signing this Form MA-NR or authorizing the signatory below to sign on your behalf, you – the *non-resident municipal advisor*, *non-resident* general partner or *non-resident managing agent* of a *municipal advisor,* or *non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf (hereinafter, "the Designator") – irrevocably designate and appoint the above United States *person* as your Agent for Service of Process, and agree that such *person* may be served on your behalf, of any process, pleadings, subpoenas, or other papers, and you further agree that such service may be made by registered or certified mail, in:

(a) *any investigation* or administrative *proceeding* conducted by the *Commission* (i) that relates to you or (as applicable) to the *municipal advisor* of which you are a general partner or *managing agent*, or with which you are associated and on whose behalf you are engaged in *municipal advisory activities* or (ii) with respect to which you may have information; and

(b) any civil suit or action brought against you or (as applicable) the *municipal advisor* of which you are a general partner or *managing agent*, or with which you are associated and on whose behalf you are engaged in *municipal advisory activities* or to which you, or (as applicable) the *municipal advisor* of which you are a general partner or *managing agent*, or with which you are associated and on whose behalf you are engaged in *municipal advisory activities* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state, or of the United States or of any of its territories or possessions or of the District of Columbia, where the *investigation, proceeding*, or cause of action arises out of or relates to or concerns *municipal advisory activities* of the *municipal advisor.*

The Designator stipulates and agrees that: any such civil suit or action or administrative *proceeding* may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, the above-named Agent for Service of Process; and that service as aforesaid shall be taken and

held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made. Such person cannot be a *Commission* member, official, or employee.

Appointment and Consent: Effect on Partnerships. If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

Certification:

The undersigned certifies under penalty of perjury under the laws of the United States of America, that the information contained in this Form MA-NR is true and correct and that this Form MA-NR is signed as a free and voluntary act.

Unless the Designator is a natural person signing on his or her own behalf, the undersigned further certifies that the Designator has duly caused this power of attorney, consent, stipulation, and agreement to be signed on the Designator's behalf by the undersigned, thereunto duly authorized:

Signature of Designator or Person Signing on Behalf of Designator:

_____ Date: _____

Printed Name: _____ Title: _____

In the City of: _____ In the Country of: _____

The Designator is executing this Form MA-NR as a:
(*Check all that apply.*)

___ *Non-resident municipal advisory firm*, other than a sole proprietor
___ *Non-resident* natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf
___ *Non-resident municipal advisor* sole proprietor
___ *Non-resident* general partner of a *municipal advisor*
Name of *municipal advisor* _____
___ *Non-resident managing agent* of a *municipal advisor*
Name of *municipal advisor* _____

The Designator is executing this Form MA-NR in connection with a(n):
(*Check all that apply.*)

___Initial application on Form MA of the Designator for registration as a *municipal advisor*
___Initial application on Form MA of the *municipal advisor* of which the Designator is a general partner or *managing agent*
___Initial submission on Form MA-I filed regarding a natural person who is a person associated with the *municipal advisor* and engaged in *municipal advisory activities* on its behalf
___Change of status of Designator from a resident to a *non-resident*
___Amendment to information supplied on a previous Form MA-NR

Mailing Address of the Designator
Do not use a P.O. Box.

_____
(number and street)

_____ _____ _____ _____
(city) (state/region) (country) (postal code)

_____
(country code) (area code) (telephone number)

For a telephone number outside of the U.S., provide the country code with the area code and number.

EDGAR CIK No. (if any)_____ *SEC* File No. (if any): _____

Notary Public Signature and Information:

Signature: _____ [PLACE SEAL HERE]

Subscribed and sworn to me this ____ day of _____, _____

My commission expires on _____ County of _____
State/Region of _____ Country of _____

B. Acceptance of the Above Designation and Appointment as Agent for Service of Process.

The United States *person* identified in Section A above as the agent for service of process hereby accepts this designation and appointment as agent for service of process, under the terms set forth in this Form MA-NR. By signing below, the signatory certifies that the *person* identified in Section A above as the agency for service of process has duly caused this power of attorney, consent, stipulation, and agreement to be signed on its behalf by the undersigned, thereunto duly authorized:

Signature of U.S. Agent for Service of Process:

_____ Date: _____

Printed Name: _____ Title: _____

C. Attached Documents

1. Is any name signed above pursuant to a written authorization, such as a board resolution or power of attorney? ☐Yes ☐No

2. Is there a written contractual agreement or other written document evidencing the designation and appointment of the above named U.S. agent for service of process and/or the agent's acceptance? ☐Yes ☐No

If "Yes" to Section C-1 and/or Section C-2., identify each such document on a separate line below, and include an accurate and complete copy of each such document as part of the PDF file in which the Form MA-NR is attached to the Form MA or Form MA-I, or attach each such document as a separate PDF to the relevant Form MA or Form MA-I.

_____

FORM MA-W

NOTICE OF WITHDRAWAL FROM REGISTRATION AS A MUNICIPAL ADVISOR

Please refer to the General Instructions for forms in the MA series before completing this form. All italicized terms herein are defined or described in the Glossary of Terms appended to the General Instructions.

A municipal advisor must complete this Form MA-W to withdraw its municipal advisor registration with the SEC.

WARNING: Complete this form truthfully. False statements or omissions may result in administrative or civil action or criminal prosecution.

Item 1 Identifying Information

A. Full Legal Name:

The name entered here must be the same as the name entered on the registrant's most recent Form MA. Do not report a name change on this Form MA-W.

_____

B. *SEC* File Number: _____

Item 2 Contact Person (for *Municipal Advisory Firms*)

The registrant's contact person must be a principal or employee (not outside counsel) of the municipal advisor authorized to receive information and respond to questions about this Form MA-W.

Name, title, and contact information:

_____
(name) (title)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

_____@_____
(E-mail address)

Item 3 Money Owed to *Clients*

Has the registrant:

A. Received any pre-paid municipal advisory fees for *municipal advisory activities*, including subscription fees for publications, that have not been delivered? ☐Yes ☐No

If "yes," what is the amount owed for these pre-paid services (including subscriptions)? $_____.00

B. Borrowed any money from *clients* that has not been repaid? ☐Yes ☐No

If "yes," what is the amount owed for these borrowed funds? $_____.00

Item 4 Advisory Contract Assignments

Has the registrant assigned any municipal advisory contracts to another *person* that engages in *municipal advisory activities*? ☐Yes ☐No

If yes, list on Section 4 of Schedule W1 each *person* to whom the registrant has assigned any such municipal advisory contracts and provide the requested information.

Item 5 Judgments and Liens

Are there any unsatisfied judgments or liens against the registrant? ☐Yes ☐No

Item 6 Books and Records

NOTE: Rule 15Ba1-8 under the Exchange Act requires a municipal advisor to preserve its books and records after the municipal advisor ceases to conduct or discontinues business as a municipal advisor.

Provide in Schedule W1 the name and address of each *person* who has or will have custody or possession of the *municipal advisor*'s books and records and each location at which any of such books and records are or will be kept.

Item 7 Statement of Financial Condition

If registrant answered "yes" to Item 3A, Item 3B, or Item 5, complete Schedule W2, disclosing the nature and amount of the registrant's assets and liabilities and net worth as of the last day of the month prior to the filing of this Form MA-W.

Execution

For a Sole Proprietor:

I, the undersigned, certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-W, including exhibits and any other information submitted, are true. I further certify that the books and records of my *municipal advisor-related* business will be preserved and available for inspection as required by law, and that all information submitted on my most recent Form MA and Form MA-I is accurate and complete as of this date. I understand that if any information contained in this Form MA-W is different from the information contained on my Form MA and Form MA-I, the information on this Form MA-W will replace the corresponding entry on my Form MA and Form MA-I. Finally, I authorize any *person* having custody or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____
Printed Name: _____ Title: _____

For a *Municipal Advisory Firm*:

I, the undersigned, have signed this Form MA-W on behalf of, and with the authority of, the *municipal advisor* withdrawing its registration. The advisor and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form MA-W, including exhibits and any other information submitted, are true. I further certify that the *municipal advisor's* books and records will be preserved and available for inspection as required by law, and that all information submitted on the *municipal advisor*'s most recent Form MA is accurate and complete as of this date. The *municipal advisor* and I understand that if any information contained in this Form MA-W is different from the information contained on Form MA, the information on this Form MA-W will replace the corresponding entry on the *municipal advisor*'s Form MA. Finally, I authorize any *person* having custody or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____
Printed Name: _____ Title: _____

FORM MA-W
Schedule W1

Certain items in Form MA-W may require additional information on this Schedule W1. Use this Schedule W1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

SECTION 4 Advisory Contract Assignments

Check here if this section is being completed: ☐

Complete the following information for each *person* to whom the registrant has assigned any advisory contract to provide *municipal advisor-related* services. Complete a separate Schedule W1 for each *person* to whom the registrant has assigned such a contract.

Name and business address of the *person* to whom advisory contracts were assigned:

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

Is this address a private residence? ☐ Yes ☐ No

SECTION 6 Books and Records

***Person* with Custody**
Complete the following information for the *person* that has or will have custody or possession of the books and records kept at the location described in this Section 6 of this Schedule. A separate Schedule W1 must be completed for each *person* that has or will have custody of any of the registrant's books and records. If the *person* listed below has or will have custody of any of the registrant's books and records at any other location, a separate Schedule W1 must be completed listing this *person* and each other location where the *person* has custody of the registrant's books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

Is this address a private residence? ☐ Yes ☐ No

Location
Complete the following information for the location where the books and records of which the *person* listed in this Section 6 of this Schedule has or will have custody or possession. A separate Schedule W1 must be completed for each location at which the registrant's records are or will be kept. If any other *person* has or will have custody or possession of any of the books and records at the location described below, a separate Schedule W1 must be completed listing this location and each other *person* that has or will have custody of the registrant's books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (postal code)

_____
(area code) (telephone number)

Is this address a private residence? ☐ Yes ☐ No

Briefly describe the books and records kept at this location. _____

FORM MA-W
Schedule W2

If the registrant answered "yes" to Item 3A, 3B, or 5 of Form MA-W, complete this Schedule W2. This balance sheet must be prepared in accordance with generally accepted accounting principles, but need not be audited.

SECTION 7 STATEMENT OF FINANCIAL CONDITION

I. Assets

Current Assets

Cash	_____
Securities at Market	_____
Non-Marketable Securities	_____
Other Current Assets	_____
Total Current Assets	**$** _____

Fixed Assets

Total Fixed Assets	**$** _____

TOTAL ASSETS	$_____

II. Liabilities & Shareholders' Equity

Current Liabilities

Prepaid Advisory Fees	_____
Short-Term Loans from *Clients*	_____
Other Short-Term Loans	_____
Other Current Liabilities	_____
Total Current Liabilities	$ _____

Fixed Liabilities

Long-Term Debt Owed to *Clients*	_____
Other Long-Term Debt	_____
Other Long-Term Liabilities	_____
Total Fixed Liabilities	$ _____

Shareholders' Equity

Total Shareholders' Equity (or Deficit)	**$** _____

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$_____

By the Commission.

Date: September 20, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–23524 Filed 11–8–13; 8:45 am]

BILLING CODE 8011–01–C