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Compliance Clinic

How CCOs Can Prepare For Muni Advisor Registration

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Beginning July 1, the first wave of filers will need to submit their registration materials under the **Securities and Exchange Commission's** permanent registration regime for municipal advisors. While many broker/dealers, banks and specialized financial advisers are already registered under the SEC's existing temporary registration scheme, and with the **Municipal Securities Rulemaking Board**, both regulators will require existing and new registrants to submit extensive new information and documentation. In preparation for permanent registration, firms should take various steps, as outlined below.

1. Determine if you need to register for the first time or convert your temporary SEC registration

In 2010, Section 975 of the Dodd-Frank Act established a new regulatory regime for municipal advisors. On Sept. 18, 2013, the SEC adopted a final rule that establishes a permanent registration regime for municipal advisors to replace its temporary registration process, which has been in effect since 2010. The MSRB has adopted a parallel registration requirement.

Absent an available exclusion or exemption, a municipal advisor must register with the SEC and MSRB. In addition to registration requirements, municipal advisors must comply with:

- Rules promulgated by the MSRB;
- A statutory fiduciary duty when providing advice concerning certain matters to municipal entities; and
- Recordkeeping requirements as established by the final rule and under existing and proposed MSRB rules.

A "municipal advisor" includes any person that:

- Provides advice to or on behalf of a municipal entity or obligated person (as defined below) with respect to derivatives, guaranteed investment contracts, the investment of proceeds of municipal securities, the recommendation and brokerage of municipal escrow investments or the issuance of municipal securities, including advice with respect to the structure, timing, terms and similar matters concerning such financial products or issues; or
- Undertakes a solicitation of a municipal entity on behalf of certain unaffiliated financial intermediaries for compensation.

A "municipal entity" is defined as: Any state or political subdivision, agency or instrumentality; any plan, program or pool of assets sponsored or established by any of the foregoing; and any other issuer of municipal securities. An "obligated person" is defined as any person that is 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.

The statute and SEC rules contain a number of conditional exclusions and exemptions for banks and registered investment advisers, among others. They also permit reliance on representations from customers and others as to factual matters, such as whether a municipal entity or obligated person is seeking advice with respect to the proceeds of a municipal offering.

Firms will need to examine carefully whether they can rely on exemptions or exclusions from the definition of municipal advisor given their business, and also seek to obtain relevant representations concerning factual matters if they wish to avoid registration.

For municipal advisors that are temporarily registered, the final rule provides four staggered compliance periods, starting in July 2014, for registrants to complete their applications for registration under the permanent regime. Each registrant's staggered registration period is based on its existing temporary registration number.

New registrants that are required to register before Oct. 1, 2014, must register under the temporary registration regime and subsequently file an application under the permanent regime during the applicable filing period. New registrants that enter into the municipal advisory business on or after Oct. 1, 2014, and do not have a temporary registration number as of Oct. 1 must file a complete application for registration under the permanent regime on or after October 1 and be registered before engaging in municipal advisory activities.

2. Gather the necessary information

Registration with the SEC requires the filing of: a Form MA for the firm; a Form MA-I for each natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf;



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and, for foreign firms, a Form MA-NR.

These forms call for extensive information that may not in all cases be gathered by firms at present, and will likely require firms to implement new processes for capturing such information for purposes of initial registration and to support continuing required updates, as described below.

If a firm has not previously completed Form ADV or BD for the registrant, the registration process will be a significant effort. Similarly, if a firm has not completed Form U4s for its associated persons, completing Form MA-I will be a long and time-consuming process, as applicants will be required to gather extensive information on each of their natural associated persons.

Information that must be obtained under the final rule and the municipal advisor registration forms includes, among many other items:

- The number and names of firms and other persons that solicit on behalf of the applicant and the number and names of employees that do business independently on the applicant's behalf as affiliates of the applicant;
- Compensation arrangements, including how the applicant is compensated and whether the applicant receives compensation for municipal advisory activities from anyone other than clients;
- The financial industry and other activities of all associated persons, including sister affiliates, with no permitted exclusions;
- Information regarding the investment or brokerage discretion of the applicant or any of its natural associated persons;
- Information regarding the disciplinary history and certain litigation information for the firm and all natural associated persons, including sister affiliates; and
- The names and registration numbers of domestic and foreign affiliates.

3. Obtain the necessary consents

An authorized representative of each firm must sign each Form MA-I and attest that the firm has obtained and retained a written consent to service of process from the natural associated person named in the Form MA-I. Firms should begin to obtain written consents to service of process in advance of the registration date.

Foreign entities will need to gather additional documentation, including specified consents to service of process within the U.S. and a legal opinion, concerning, among other things, that the ability of the registrant can provide the SEC with access to the municipal advisor's books and records.

4. Make arrangements to access SEC, MSRB systems

Forms MA and MA-I must be submitted electronically through EDGAR. Applicants that are not at present EDGAR filers must become so, with authorized access codes. Form MA will be considered "filed" upon submission of a completed form, together with all additional required documents, including a Form MA-I for

each natural associated person.

There is no short-form registration for applicants already registered with the SEC under other regulatory regimes, though Form MA allows incorporation by reference of certain, quite limited, information already submitted on other forms.

The signatory must certify, under penalty of perjury, that the information and statements on Form MA are true and correct. The EDGAR Filing Filer Manual describes the general process for preparing and submitting the municipal advisor forms to EDGAR for processing. Registrants may also contact the SEC's hotline at (202) 551-5680 for guidance on specific questions.

In addition, the MSRB requires a municipal advisor to register with it on Form A-12, which must be completed with information beyond what is required on Forms MA and MA-I. All dealer and municipal advisor registrants must access and update their new Form A-12 between now and Aug. 10, 2014. The MSRB will pre-populate certain information about MSRB-registered entities to make the process as easy as possible. Registrants must then verify that all information on Form A-12 is accurate and provide all required information that was not previously required or that is otherwise incomplete on the form.

The MSRB Registration Manual includes instructions for completing and amending Form A-12, graphical representations of the form and information about the method of payment under Rule A-12. Registrants may also contact the MSRB's support number at (703) 797-6668 for technical assistance with MSRB Gateway.

5. Establish procedures to gather information and update filings on a periodic basis

A municipal advisor must renew its Form MA annually by filing an update within 90 days after the end of its fiscal year. For annual updates or amendments, the filer will access EDGAR and the most recently submitted version of the form will be pre-populated for the filer so that it need only amend outdated information.

In addition, 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, and must file an amendment to its Form MA-I whenever any information previously provided on the form becomes inaccurate.

Registrants must also review, update and affirm the information on MSRB Form A-12 during the first 17 business days following Jan. 1 of each calendar year, and update Form A-12 within 30 days if any information on the form becomes inaccurate or the firm ceases to be engaged in municipal advisory activities.

Municipal advisors should implement policies and procedures to ensure proper updating of all forms, providing Form MA-Is for new associated persons on a continuing basis and, of course, compliance with the SEC's and MSRB's substantive requirements for municipal advisors, including recordkeeping, conduct, professional qualifications and fiduciary duty, where applicable.

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