

SEC Releases Final Municipal Advisor Registration Rules Part II: Permanent Registration Process

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Contents

- When Permanent Registration is Required 1
- Process for Registration of Municipal Advisors 2
- Registration Process Following the Filing of Form MA 2
- Information Required on Form MA... 3
- Information Required on Form MA-I 3
- Requirements Applicable to Non-Resident Municipal Advisors..... 4
- Registration of SIDs..... 4
- Requirements to Update Previously Filed Forms 5
- Withdrawal from Registration..... 5
- Registration Fees 5
- Confidentiality 6
- Record Retention Requirements Concerning Registration 6

On September 18, 2013, the SEC adopted a **final rule** (the “**Final Rule**”) establishing a permanent registration scheme to replace the temporary registration scheme for municipal advisors that has been in effect since October 2010. As discussed in our memorandum dated October 2, 2013 titled “SEC Releases Final Municipal Advisor Registration Rules – Part I: Who is a Municipal Advisor?” (the “**Part 1 Memorandum**”), the Final Rule provides detailed guidance regarding who must register as a municipal advisor, and applicable exemptions. This memorandum focusses on the mechanics and timing of permanent registration for those required to register.

When Permanent Registration is Required

Under Section 15B of the Securities Exchange Act of 1934 (the “**Exchange Act**”) (as amended by Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), it is unlawful for any municipal advisor to provide certain advice to or on behalf of a municipal entity or obligated person, or to undertake certain solicitations of a municipal entity or obligated person, absent registration with the SEC, unless an exemption or exclusion applies. The Municipal Securities Rulemaking Board (“**MSRB**”) also requires municipal advisors to register with it. Approximately 1,110 municipal advisors currently are registered with the SEC under the existing temporary registration regime.

For municipal advisors that are temporarily registered prior to October 1, 2014, the Final Rule provides four staggered compliance periods, starting in July 2014, for registrants to complete their applications for registration under the permanent registration regime. Each registrant’s staggered registration period is based on its existing temporary registration number as set forth in the accompanying sidebar. For temporarily registered registrants that fail to file under the permanent regime, their temporary registration will expire 45 days after the end of the applicable filing period.¹ New registrants that are required to register before October 1, 2014 must register under the temporary registration regime and subsequently file an application under the permanent regime during the applicable filing period.

Staggered Compliance Periods	
Temporary Registration Number Range	Period for Application Filing
866-00001-00 through 866-00400-00	7/1/2014–7/31/2014
866-00401-00 through 866-00800-00	8/1/2014–8/31/2014
866-00801-00 through 866-01200-00	9/1/2014–9/30/2014
After 866-01200-00	10/1/2014–10/31/2014

¹ At the same time that it issued the Final Rule, the SEC issued an interim temporary final rule (the “**Rule Extension**”) to extend the expiration date of the temporary registration rules to December 31, 2014 in order to allow municipal advisors to continue to remain temporarily registered during the staggered compliance period.

“Associated Person of a Municipal Advisor” is defined as:

- 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.

“Municipal Advisory Activities”

This term means the following activities that, absent the availability of an exclusion or an exemption to the definition of municipal advisor, would cause a person to be a municipal advisor:

- 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
- solicitation of a municipal entity or obligated person acting in such capacity.

Process for Registration of Municipal Advisors

Registration is initiated by filing a Form MA. In addition, each firm must file a Form MA-I with respect to each natural person (“**natural associated person**”) associated with the firm and engaged in municipal advisory activities on the firm’s behalf, including employees of the firm.²

Forms MA and MA-I must be submitted electronically through EDGAR. Applicants that are not currently EDGAR filers must become EDGAR filers with authorized access codes.

Non-resident (foreign) municipal advisors must comply with additional requirements, as described below.

The SEC has provided general instructions for the Form MA series as well as specific instructions for certain items in the forms to assistant applicants in completing the forms.

Registration Process Following the Filing of Form MA

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. When an applicant transmits a Form MA, EDGAR will perform initial automated checks to detect unanswered questions and defective responses. If the form passes these checks, the applicant will be provided with an SEC file number with an 867-prefix to enable it to check the status of its application.

SEC staff will review the form for deficiencies, and if the Form MA is considered incomplete, the applicant will receive an EDGAR-generated notice informing the applicant that its transmission has been suspended, with reasons and instructions for corrections and retransmission.

Unlike the temporary registration process, the SEC staff will review the information on Form MA. Within 45 days of the submission of a complete Form MA, the SEC must either grant registration or institute proceedings to deny registration. If granted, the applicant will receive an EDGAR-generated email advising that the filing has been “accepted” and the SEC will subsequently issue a formal order of approval.

Forms MA and MA-I are “reports” within the meaning of the Exchange Act, making it unlawful to willfully make or cause to be made, false or misleading statements of material fact or omissions on the forms.

² Independent contractors who engage in municipal advisory activities on behalf of a municipal advisor are included in the definition of “employee” for these purposes.

Informational Categories in Form MA	
Part I: Items through 10	
Item 1	Identifying Information
Item 2	Form of Organization
Item 3	Successions
Item 4	Information About Applicant's Business
Item 5	Other Business Activities
Item 6	Financial Industry and Other Activities of Associated Persons
Item 7	Participation or Interest of Applicant, or of Associated Persons of Applicant, in Municipal Advisory Client or Solicitee Transactions
Item 8	Owners, Officers, and Other Control Persons
Item 9	Disclosure Information
Item 10	Small Businesses
Schedules	
Schedule A	Direct Owners and Executive Officers of the Applicant
Schedule B	Indirect Owners of the Applicant
Schedule C	Amendments to Schedules A and B
Schedule D	Additional information
Part II: DRPs	
<ul style="list-style-type: none"> ▪ Criminal Action ▪ Regulatory Action ▪ Civil Judicial Action 	
Execution Pages	

Authorized Persons

The individual who must sign Forms MA and MA-I for a registrant depends on the registrant's form of organization:

- for a sole proprietorship, the sole proprietor;
- 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.

Information Required on Form MA

Form MA, which is modeled on Form ADV (Part I) (the SEC form for registration of investment advisers), is an electronic, web-based form consisting of two Parts, as described in the accompanying sidebar. Certain other documents must be attached in PDF format to the Form MA filing. For example, Criminal Action Disclosure Reporting Pages (“DRPs”) require applicable court documents and other supporting documents to be attached to, and filed electronically with, the form and the DRPs.

Form MA allows incorporation by reference of *certain*, quite limited, information already submitted on other forms by the applicant, its natural associated persons or another entity. For example, the DRPs on Form MA permit incorporation by reference to DRPs already on file with CRD (for registered broker-dealers and their natural associated persons), IARD (for registered investment advisers), or EDGAR. However, the SEC declined to adopt commenters’ suggestion to allow applicants already registered with the SEC under other regulatory regimes to check an additional box on their primary registration forms or to complete a short-form registration process.

The general categories of information required on Form MA are set forth in the accompanying sidebar.

An authorized person for the applicant, as defined in the accompanying sidebar, signs Form MA by typing his or her name on the relevant execution page. A choice of two execution pages is available depending on whether the municipal advisor is a resident of the United States or a “non-resident” municipal advisor, as defined in the sidebar on the following page. The signatory must certify that the books and records of the municipal advisor will be preserved and available for inspection and authorize any person with custody to make them available to federal regulatory representatives. The execution page for domestic municipal advisors also requires the signatory to state that the registrant has appointed certain persons as agents for service of process.

In a departure from the SEC’s prior proposal for the permanent registration scheme, the SEC removed a proposed compliance self-certification section of the execution page.

Information Required on Form MA-I

Form MA-I is similar to Form U4, which is used for natural associated persons of registered broker-dealers. Applicants will be required to gather extensive information on each of their natural associated persons in order to complete Form MA-I. The SEC estimates that applicants will be required to complete a Form MA-I for approximately 11,250 individuals.

The categories of information required by Form MA-I are described in the sidebar on the following page. Part I asks for information similar to that requested on Form U4, such as employment history and other businesses in which the individual is engaged. The DRPs for Form MA-I request more detailed information than that contained in the DRPs in Form MA.

The authorized representative of the firm signs Form MA-I by typing his or her name on the execution page. He or she must attest (i) to the truth and correctness of the information provided in the form, and (ii) that the firm has

A “non-resident” is defined as

- 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;
- 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
- 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.

obtained and retained written consent from the natural associated person that service of any process 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.

As with Form MA, the SEC eliminated a proposed compliance self-certification section from Form MA-I.

Requirements Applicable to Non-Resident Municipal Advisors

Each non-resident municipal advisory firm must file Form MA-NR together with its initial application for registration on Form MA. Municipal advisory firms must also file a separately completed and executed Form MA-NR for every non-resident:

- general partner and/or managing agent of the firm; and
- natural associated person.

Section A of Form MA-NR requires the person executing the form to furnish a written irrevocable consent and power of attorney to appoint an agent in the United States for service of process and to identify that agent for the non-resident municipal advisor and for each of its non-resident general partners, non-resident managing agents and non-resident natural associated persons. Section B requires the municipal advisor to obtain the signature of the appointed agent. Section C asks whether any signature on the form was obtained pursuant to written authorization and, if so, to include a copy of the authorization with the Form MA or MA-I being submitted.

Non-resident municipal advisors must also provide, as an exhibit to Form MA, an opinion of counsel that the municipal advisor can, as a matter of law, provide the SEC with access to its books and records and submit to inspection and examination by the SEC.

Form MA-NR, unlike the other forms in the Form MA series, must be printed out and manually signed by both the non-resident and the person designated as agent for service of process. Each signature must be separately notarized 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.

Registration of SIDs

The Final Rule permits a separately identifiable department or division (“SID”) of a bank that meets the requirements of the rule to register as a municipal advisor instead of the bank itself, if the conditions summarized in the sidebar on the following page are satisfied. The SEC has not provided guidance regarding the registration mechanics applicable to SIDs. For example, it is not clear whether the questions regarding principal place of business, employees, chief compliance officer and controlled affiliates relate only to the SID or to the entire bank.

Informational Categories in Form MA-I	
Part I: Items through 7	
Item 1	Identifying Information
Item 2	Other Names
Item 3	Residential History
Item 4	Employment History
Item 5	Other Business
Item 6	Disclosure Information
Item 7	Signature
Part II: DRPs	
<ul style="list-style-type: none"> ▪ Criminal Action ▪ Regulatory Action ▪ Investigations ▪ Terminations ▪ Judgments/liens ▪ Civil Judicial Action ▪ Customer complaints/arbitration/civil litigation 	
Execution Pages	

In order to register as a SID, rather than the bank, the SID must conduct all of the municipal advisory activities of the bank and must comply with the following requirements, among others:

- the SID must be under the direct supervision of an officer or officers designated by the board of directors as responsible for the day-to-day conduct of the bank's municipal advisory activities; and
- all of the records relating to the bank's municipal advisory activities must be separately maintained in, or extractable from, such SID's own facilities or the facilities of the bank, and such records must be so maintained or otherwise accessible as to permit independent examination and enforcement.

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) of Form MA 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) of Form MA becomes materially inaccurate.

Requirements to Update Previously Filed Forms

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). For annual updates or amendments, 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 to the annual update, a municipal advisor must promptly file an amendment to its Form MA whenever a material event, as defined in the accompanying sidebar, has occurred that changes the information provided in the form. When submitting an amendment between annual updates, a municipal advisor is not required to update certain responses in the Form MA, such as information about its business and other business activities.

Form MA-I must promptly be amended whenever any information previously provided on Form MA-I becomes inaccurate.

A non-resident municipal advisory firm must promptly file a new Form MA-NR along with an amendment to Form MA when a previously filed Form MA-NR becomes invalid or the information in it becomes inaccurate.

Withdrawal from Registration

A firm that is registered as a municipal advisor but that is no longer required to be registered must file a Form MA-W to withdraw from registration. If a natural associated person ceases to engage in municipal advisory activities on behalf of a firm, Form MA-W will not be required; rather, the change must be reported by the firm as an amendment to Form MA-I.

Form MA-W asks for relatively limited information from withdrawing firms, with most of the information being intended to protect investors and clients of the firm and to provide notice to them that the firm is no longer registered. For example, a withdrawing firm must indicate whether it owes any services or money to clients, whether it has assigned its contracts to another person that engages in municipal advisory activities and whether it has any unsatisfied judgments or liens against it.

The signatory to Form MA-W must certify that all statements and information in the form are true and that the firm's books and records will be preserved and available for inspection, including by the person having custody or possession. The signatory must also certify that all information previously submitted in the most recent Form MA is accurate and complete as of the date the Form MA-W is signed.

The notice of withdrawal on Form MA-W will be effective 60 days after filing. If a municipal advisor files a Form MA-W after the SEC initiates proceedings against the municipal advisor to suspend or revoke its registration, among others, or if the SEC institutes proceedings to impose terms or conditions upon the withdrawal before it is effective, then the notice of withdrawal will not become effective except at the time and upon the conditions imposed by the SEC.

Registration Fees

There is no provision in the Exchange Act authorizing the SEC to charge municipal advisors (or to authorize another entity to collect) registration

fees. This is unlike Section 204(c) of the Investment Advisers Act, which permits the SEC to charge fees associated with filings and the maintenance of a filing system. However, MSRB Rules require municipal advisors to register with it and to pay an initial fee of \$100 and an annual fee of \$500.

Confidentiality

The information supplied on Form MA, like Forms ADV and BD, is not confidential, unless indicated otherwise. However, the following information will be kept confidential and blocked from public view: social security numbers; foreign identity numbers; dates of birth; and private residential addresses disclosed for natural associated persons.

Record Retention Requirements Concerning Registration

The Final Rule contains detailed record creation and retention requirements, which become effective 60 days after publication of the Final Rule in the Federal Register. Municipal advisors are required to maintain and preserve enumerated books and records, including, among others, the following:

- books and records containing a list or other record of the names, titles, and business and residence addresses of all persons associated with the municipal advisor;
- 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
- written consents to service of process from each natural associated person.

These books and records must be maintained and preserved for not less than five years, the first two years in an easily accessible place. Corporate governance documents (except those which were only in effect before the Final Rule takes effect), such as articles of incorporation, 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.

A withdrawing municipal advisor is also required to preserve its books and records and to list on Form MA-W the name and address of each person who has or will have custody or possession of the books and records and the location where the books and records will be kept.

Non-resident municipal advisors that maintain books and records outside the United States must provide the SEC with a written undertaking to furnish the SEC with copies of books and records at the municipal advisor's expense at the SEC's principal or regional office within 14 calendar days of written demand.

Differences between forms that may be used by registrants in their current activities (such as Forms BD and ADV) and additional fields in the new municipal advisor forms will require registrants to obtain and retain a significant amount of information in order to complete and later update the registration forms. Currently, firms may not be collecting some of the

required information. Information that must be obtained under the Final Rule and the municipal advisor registration forms includes:

An “affiliate” of a person is defined as:

- all the person’s officers, partners, or directors (or any person performing similar functions);
- all persons directly or indirectly controlling or controlled by the person; and
- all of the person’s current employees (other than employees performing only clerical, administrative, support or similar functions).

- written consents to service of process from *each* natural associated person, which could be extremely burdensome for applicants that have a large number of natural associated persons;
- 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, as defined in the accompanying sidebar, of the applicant;
- the approximate number of municipal entities and obligated persons that were solicited by the applicant on behalf of a third-party during its most recently completed fiscal year;
- compensation arrangements, including how applicant is compensated and whether 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;
- participation or interest of applicant or its natural associated persons in municipal advisory client or solicitee transactions;
- information regarding the investment or brokerage discretion of the applicant or any of its natural associated persons;
- information regarding the disciplinary history for all natural associated persons, including sister affiliates, which is not currently required on Form ADV;
- disclosures relating to felonies of *any* kind, not limited to felonies relating to municipal advisor-related and investment-related business;
- disclosure of past civil injunctions, which is not time-limited, unlike the requirement in Form BD to disclose any civil judicial injunctions during the past 10 years;
- information that *could* result in a positive answer to any of the questions in either the civil or regulatory sections on Forms MA and MA-I, which require the applicant to obtain extensive information from each natural associated person in order to accurately complete the appropriate DRP;
- the names and registration numbers of domestic and foreign affiliates, which are not currently requested on Form ADV; and
- a list of all of the applicant’s websites, which could be a significant number for an applicant that is part of a global institution.

Conclusion

As discussed above, the SEC has provided staggered compliance periods in which applicants must register under the permanent regime, starting in July 2014. This extended period is reflective of the substantial amount of information and documentation that applicants must start to collect in order to complete the registration process.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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