

# Filing Deadline for Municipal Advisor Registration Is October 1, 2010

September 28, 2010

## Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") makes it unlawful for a "municipal advisor" to provide municipal advisory services to a municipal entity or to solicit a municipal entity without registering with the Securities and Exchange Commission ("SEC" or "Commission").<sup>[1]</sup> On September 1, 2010, the SEC adopted an interim temporary final rule, Rule 15Ba2-6T (the "Temporary Rule"), to permit municipal advisors to satisfy temporarily the October 1, 2010 registration deadline set by the Dodd-Frank Act.<sup>[2]</sup> Registration is accomplished by filing a temporary registration form (MA-T) electronically through the Commission's Web site. Municipal advisors must be registered by **this Friday, October 1, 2010**, in order to continue their municipal advisory services.

Because of the short timeframe between the publication of the Temporary Rule and its effective date, and a comment period that extends beyond this Friday's deadline,<sup>[3]</sup> there has been little opportunity for the industry to gain insight into the new regulation. However, we address below some of the more common questions that have been asked by our broker-dealer and investment adviser clients regarding the application of the Temporary Rule to their municipal operations.

**Q. If a broker-dealer advises a municipal entity<sup>[4]</sup> regarding a program for the investment of municipal bond proceeds, and that program does not involve investing in municipal securities, does the broker-dealer have to register as a municipal advisor?**

A. Yes. The term municipal advisor encompasses a broker-dealer who provides advice to a municipal entity with respect to any plan or program for the investment of the proceeds of municipal securities – how the proceeds are invested is irrelevant.<sup>[5]</sup>

**Q. What if an investment adviser provides the same services; that is, advises a municipal entity on investing the proceeds of municipal securities in financial instruments other than municipal securities?**

A. The investment adviser would *not* be required to register as a municipal advisor. The Dodd-Frank Act specifically excludes from the definition of municipal advisor any investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), or persons associated with such investment advisers who are providing investment advice. The SEC interprets this exclusion to mean that a registered investment adviser or investment adviser representative who provides municipal advisory services is excluded from registration, so long as those services constitute investment advice within the meaning of the Advisers Act.[\[6\]](#)

**Q. If a broker-dealer provides advice to a municipal entity regarding a municipal financial product, must it register as a municipal advisor notwithstanding that it acts as an underwriter with respect to other municipal securities?**

A. Yes. While the Dodd-Frank Act excludes from the definition of municipal advisor any broker, dealer or municipal securities dealer serving as an underwriter (as defined in Section 2(a)(11) of the Securities Act of 1933), a broker, dealer or municipal securities dealer who provides municipal advisory services while acting in a capacity *other than as an underwriter* is a municipal adviser.[\[7\]](#)

**Q. If a broker-dealer, acting as a finder, solicits a municipal entity to invest in an unaffiliated private fund which itself does not invest in municipal securities, does the broker-dealer have to register as a municipal advisor?**

A. Yes. The term municipal advisor includes a broker-dealer who undertakes a solicitation of a municipal entity on behalf of a broker, dealer, municipal securities dealer or federally registered investment adviser that does not control or is not under common control with that broker-dealer.[\[8\]](#)

## **The Registration Process**

In order to register under the program, municipal advisors must obtain access credentials (username and password) and complete and submit the online registration form (Form MA-T) to the SEC by Friday, October 1, 2010. Form MA-T requires the municipal advisor to provide certain identifying and contact information, specify the type of municipal advisory activities in which it engages, and supply information about its disciplinary history.

We would be happy to assist any of our friends and clients in determining whether they must register and in meeting Friday's deadline.

[1] Section 975 of the Dodd-Frank Act, which amends Section 15B of the Securities Exchange Act of 1934 (the "Exchange Act").

[2] See Exchange Act Release No. 62824 (Sept. 1, 2010), available at <http://www.sec.gov/rules/interim/2010/34-62824.pdf> (the "Adopting Release").

[3] The Temporary Rule includes a request for comments, which may be submitted up until October 8, 2010, that will be assessed by the Commission in promulgating a final permanent municipal advisor registration program. The Temporary Rule will be effective through December 31, 2011.

[4] A municipal entity includes any state or municipality or any agency thereof, any plan, program or pool of assets sponsored or established by a state or municipality, and any other issuer of municipal securities. (See new Section 15B(e)(8) of the Exchange Act.)

[5] The term "municipal advisor" is defined to include any person who provides advice to or on behalf of a municipal entity with respect to municipal financial products. The term "municipal financial products" is defined to mean municipal derivatives, guaranteed investment contracts and investment strategies. The term "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 brokerage of municipal escrow investments. (See new Sections 15B(e)(3), (4) and (5) of the Exchange Act.)

[6] Such interpretation is "in furtherance of the goals of the Dodd-Frank Act to regulate municipal advisors, a category of persons previously unregulated." Adopting Release at 9.

[7] Adopting Release at 8.

[8] See new Sections 15B(e)(4)(A)(ii) and 15B(e)(9) of the Exchange Act.