

## **Text of Municipal Advisor Rule and Statutory Basis**

### **X. STATUTORY BASIS AND TEXT OF AMENDMENTS**

Pursuant to the Exchange Act, and particularly Sections 15B, 17, and 36 (15 U.S.C. 78o-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:

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<sup>2011</sup> See Tamalpais Advisors Letter.

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78o-4, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 et seq., unless otherwise noted.

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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. 78o-4, 78o-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. 78o-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) \* \* \*

(7) Under section 15B(a) of the Act (15 U.S.C. 78o-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. 78o-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

(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, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 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.

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Sections 240.15Ba1-1 through 240.15Ba1-8 are also issued under sec. 975, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Section 240.15Bc4-1 is also issued under sec. 975, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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7. Sections 240.15Ba1-1 through 240.15Ba1-8 are added to read as follows:

Sec.

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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. 78o-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. 78o-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. 78o-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. 78o-4(e)(4)). Under section 15B(e)(4)(A) of the Act (15 U.S.C. 78o-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. 78o-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.

780-4(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. 780-4(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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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. 78o(b)(4)(A), 78o(b)(4)(D), 78o(b)(4)(E), 78o(b)(4)(H), 78o(b)(4)(G)), has been convicted of any offense specified in subparagraph (B) of such paragraph (4) (15 U.S.C. 78o(b)(4)(B)) within 10 years of the commencement of the proceedings under section 15B(c)(4) (15 U.S.C. 78o-4(c)(4)), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4) (15 U.S.C. 78o(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. 78o-4(c)(4)) or section 15B(c)(5) of the Act (15 U.S.C. 78o-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. 78o-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. 78o-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. 78o-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. 78o-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.]**