

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PART 240**

**[Release No. 34-66020; File No. S7-19-10]**

**RIN 3235-AK69**

**Extension of Temporary Registration of Municipal Advisors**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final temporary rule; extension.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is amending interim final temporary Rule 15Ba2-6T, which provides for the temporary registration of municipal advisors under the Securities Exchange Act of 1934 (“Exchange Act”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), to extend the date on which Rule 15Ba2-6T will sunset from December 31, 2011 to September 30, 2012. Under the amendment, all temporary registrations submitted pursuant to Rule 15Ba2-6T will expire no later than September 30, 2012.

**DATES:** Effective Date: December 31, 2011. Interim final temporary Rule 15Ba2-6T will expire on September 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Victoria Crane, Assistant Director, Office of Market Supervision, at (202) 551-5744; Yue Ding, Attorney-Adviser, Office of Market Supervision, at (202) 551-5842; Mary Simpkins, Senior Special Counsel, Office of Municipal Securities, at (202) 551-5683; Dave Sanchez, Attorney Fellow, Office of Municipal Securities, at (202) 551-5540; John L. McWilliams, III, Attorney Fellow, Office of Municipal Securities, at (202) 551-5688; or any of the above at Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6628.

**SUPPLEMENTARY INFORMATION:** The Commission is extending the expiration date for interim final temporary Rule 15Ba2-6T under the Exchange Act.

## **I. DISCUSSION**

Section 15B(a)(1) of the Exchange Act,<sup>1</sup> as amended by Section 975(a)(1)(B) of the Dodd-Frank Act,<sup>2</sup> makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission. Section 15B(a)(2) of the Exchange Act,<sup>3</sup> as amended by Section 975(a)(2) of the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

The registration requirement for municipal advisors became effective on October 1, 2010. On September 1, 2010, the Commission adopted interim final temporary Rule 15Ba2-6T under the Exchange Act,<sup>4</sup> which permits municipal advisors to temporarily satisfy the statutory registration requirement by completing Form MA-T<sup>5</sup> through the Commission's public website.<sup>6</sup>

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<sup>1</sup> 15 U.S.C. 78o-4(a)(1).

<sup>2</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> 15 U.S.C. 78o-4(a)(2).

<sup>4</sup> 17 CFR 240.15Ba2-6T.

<sup>5</sup> 17 CFR 249.1300T.

<sup>6</sup> See Securities Exchange Act Release No. 62824, 75 FR 54465 (September 8, 2010) ("Interim Release"). The Commission received seven comment letters on the Interim

Rule 15Ba2-6T serves as a transitional step to the implementation of a permanent registration program, makes relevant information available to the public and municipal entities, and permits municipal advisors to continue their business after October 1, 2010.

Under existing Rule 15Ba2-6T, all temporary registrations submitted pursuant to that rule will expire on the earlier of: (1) the date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose;<sup>7</sup> (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) on December 31, 2011.<sup>8</sup> Further, existing Rule 15Ba2-6T will expire on December 31, 2011.<sup>9</sup>

As stated in the Interim Release, the Commission believes that providing a temporary registration process for municipal advisors, pursuant to an interim final temporary rule, is a necessary and appropriate way to proceed, is consistent with the intent of Congress in enacting Section 975 of the Dodd-Frank Act, and is a tailored way to provide investors and municipal entities with basic and important information while the Commission considers a permanent

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Release. See letters from Brad R. Jacobsen, dated September 7, 2010; John J. Wagner, Kutak Rock LLP, dated September 28, 2010; Joy A. Howard, Principal, WM Financial Strategies, dated October 5, 2010; Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, dated October 8, 2010; Carolyn Walsh, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, Deputy General Counsel, ABA Securities Association, dated October 13, 2010; Amy Natterson Kroll and W. Hardy Callcott, Bingham McCutchen LLP, on behalf of the National Association of Energy Service Companies, dated October 13, 2010; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 15, 2010.

<sup>7</sup> On December 20, 2010, the Commission proposed for public comment rules for the permanent registration of municipal advisors. See Securities Exchange Act Release No. 63576; 76 FR 824 (January 6, 2011) ("Proposing Release").

<sup>8</sup> See 17 CFR 240.15Ba2-6T(e).

<sup>9</sup> See 17 CFR 240.15Ba2-6T(f).

registration program. As noted above, however, existing Rule 15Ba2-6T will expire on December 31, 2011. Accordingly, the Commission has determined that it is necessary and appropriate to extend the expiration date of Rule 15Ba2-6T to September 30, 2012, to provide a method for municipal advisors to continue to temporarily satisfy the registration requirement under Section 15B of the Exchange Act until the Commission promulgates a final rule establishing another manner of registration of municipal advisors, prescribing a form for such purpose, and developing an electronic registration system. This extension will prevent a gap between the time at which the temporary rule expires and at which municipal advisors must be registered with the Commission under a permanent registration regime. The Commission notes that it is adopting amendments to Rule 15Ba2-6T only to extend the expiration date of that rule. The Commission is not making any other amendments to Rule 15Ba2-6T or Form MA-T.

Specifically, the Commission is amending Rule 15Ba2-6T(e) to provide that all temporary registrations submitted pursuant to Rule 15Ba2-6T will expire on the earlier of: (1) the date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) on September 30, 2012. The Commission is also amending Rule 15Ba2-6T(f) to provide that the interim final temporary rule will expire on September 30, 2012. Thus, absent further action by the Commission, Rule 15Ba2-6T will expire on September 30, 2012 at 11:59 p.m. Eastern Time.

The Commission has considered the seven comment letters received on the Interim Release<sup>10</sup> and, given the limited nature of this extension and the Commission's ongoing process

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<sup>10</sup> See supra note 6.

of considering permanent rules for the registration of municipal advisors, the Commission is not making any other changes to the temporary registration rule and Form MA-T. The Commission believes that making other changes to the temporary rule and Form MA-T could cause those relying on the rule or form to need to make adjustments to their operations or amendments to their forms that may be applicable only until the permanent rules are considered by the Commission. The Commission also notes that the comment letters received in response to the Interim Release were addressed in the Proposing Release, and were considered for purposes of the proposed rules for the registration of municipal advisors.

The amendments to Rule 15Ba2-6T will be effective on December 31, 2011. The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.<sup>11</sup> This requirement does not apply, however, if the agency “for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>12</sup> The Commission notes that extending the expiration date of Rule 15Ba2-6T will not affect the substantive provisions of that rule, and will allow municipal advisors to continue to comply with the statutory registration requirement until a permanent registration regime becomes effective. Further, the Commission notes that extending the expiration date of Rule 15Ba2-6T will prevent a regulatory gap from developing between the time at which the temporary rule expires and at which municipal advisors must be registered with the Commission under a permanent registration regime. For these reasons, and the reasons discussed throughout this release, the Commission believes that there is good cause to extend the

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<sup>11</sup> See 5 U.S.C. 553(b).

<sup>12</sup> 5 U.S.C. 553(b)(B).

expiration date of Rule 15Ba2-6T to September 30, 2012, and to find that notice and solicitation of comment on the extension is impracticable, unnecessary, or contrary to the public interest.<sup>13</sup>

The APA also generally requires that an agency publish a substantive rule in the Federal Register not less than 30 days before its effective date.<sup>14</sup> However, this requirement does not apply if the agency finds good cause and publishes such cause with the rule.<sup>15</sup> For reasons similar to those explained above, the Commission finds good cause not to delay the effective date of the extension.

In connection with the adoption of Rule 15Ba2-6T and Form MA-T, the Commission submitted to the Office of Management and Budget (“OMB”) a request for approval of the “collection of information” requirements contained in the temporary rule and form in accordance with the Paperwork Reduction Act of 1995.<sup>16</sup> OMB initially approved the collection of information on an emergency basis with an expiration date of March 31, 2011. The Commission subsequently submitted a request for extension of the approval, and OMB extended the approval to March 31, 2014. The collection of information to which Rule 15Ba2-6T and Form MA-T relates is “Rule 15Ba2-6T and Form MA-T – Temporary Registration of Municipal Advisors.” The OMB control number for the collection of information is 3235-0659. Since the Commission

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<sup>13</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirements of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impracticable, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the Federal agency promulgating the rule determines”). Because the Commission is not publishing the rule amendments in a notice of proposed rulemaking, no analysis is required under the Regulatory Flexibility Act. See 5 U.S.C. 601(2) (for purposes of the Regulatory Flexibility Act, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking).

<sup>14</sup> See 5 U.S.C. 553(d).

<sup>15</sup> See 5 U.S.C. 553(d)(3).

<sup>16</sup> 44 U.S.C. 3501 et seq.

is not amending Rule 15Ba2-6T or the disclosure requirements contained in Form MA-T other than extending the expiration date for Rule 15Ba2-6T, this amendment will not change the “collection of information” previously approved by the OMB.

The Commission is sensitive to the costs and benefits of its rules. The Commission has previously considered and discussed the costs and benefits of Rule 15Ba2-6T.<sup>17</sup> Since the Commission is not amending Rule 15Ba2-6T and Form MA-T other than to extend the expiration date for that rule, the Commission believes that the same general analysis will continue to apply for the period of the extension. An important benefit of extending the expiration date for Rule 15Ba2-6T, however, will be to allow municipal advisors to continue to comply with the statutory registration requirement until a permanent registration regime becomes effective, and to avoid a regulatory gap from developing between the time at which the temporary rule expires and at which municipal advisors must be registered with the Commission under a permanent registration regime.

Since the Commission is only extending the expiration date for Rule 15Ba2-6T and is not substantively changing Rule 15Ba2-6T and Form MA-T, the Commission’s estimated burden for each municipal advisor to complete and amend Form MA-T remains unchanged.<sup>18</sup> However, the Commission estimates that as a result of the amendment, approximately 162<sup>19</sup> new municipal

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<sup>17</sup> For a detailed description of the costs and benefits of Rule 15Ba2-6T, see Interim Release, supra note 6 at 54474-75.

<sup>18</sup> The Commission notes that in the Interim Release, it had estimated that approximately 1,000 municipal advisors would be required to complete Form MA-T. See Interim Release, supra note 6 at 54473. It further conservatively estimated that all 1,000 municipal advisors would have to amend their forms once between September 1, 2010 and December 31, 2011, recognizing that the actual number would likely be lower than 1,000. See id. As of November 31, 2011, the Commission has received 967 initial registrations, 102 amendments and 33 withdrawals.

<sup>19</sup> The Commission estimates that, between January 1, 2012 and September 30, 2012, there will be approximately 18 initial registrations per month, which is the average number of

advisors will register between January 1, 2012 and September 30, 2012 at a total labor cost of approximately \$168,000.<sup>20</sup> With regard to the 162 new municipal advisors and the municipal advisors already registered pursuant to Rule 15Ba2-6T, the Commission estimates that, between January 1, 2012 and September 30, 2012, there will be approximately 160<sup>21</sup> amendments and withdrawals at a total labor cost of approximately \$22,000.<sup>22</sup>

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition and capital formation.<sup>23</sup> In addition, Section

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initial registrations the Commission has received per month during the first eleven months of 2011.

<sup>20</sup> 162 (estimated number of initial registrations) × 2.5 hours (estimated time to complete Form MA-T) = 405 hours; 405 hours × \$273 (hourly rate for a Compliance Manager) = \$110,565. 162 (estimated number of new municipal advisors that will hire outside counsel) × 1 hour (estimated time spent by outside counsel to help a new municipal advisor to comply with the rule) × \$354 (hourly rate for an Attorney) = \$57,348. \$110,565 + \$57,348 = \$167,913. See Interim Release, supra note 6 at 54473-74. The estimated burden for each municipal advisor to complete Form MA-T and the estimated use of outside counsel by each municipal advisor remains unchanged from the Interim Release. The \$273 per hour figure for a Compliance Manager and the \$354 per hour figure for an Attorney are from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by Commission staff to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>21</sup> The Commission estimated the number of amendments and withdrawals based on the number of amendments to, and withdrawals from, registration on Form MA-T that the Commission has received as of November 31, 2011.

<sup>22</sup> 160 (estimated number of amendments and withdrawals) × 0.5 hours (estimated time to amend Form MA-T) = 80 hours; 80 hours × \$273 (hourly rate for a Compliance Manager) = \$21,840. See Interim Release, supra note 6 at 54473-74. The \$273 per hour figure for a Compliance Manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by Commission staff to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>23</sup> See 15 U.S.C. 78c(f).

23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.<sup>24</sup> Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>25</sup> In the Interim Release, the Commission considered the effects of Rule 15Ba2-6T on efficiency, competition, and capital formation.<sup>26</sup> Since the Commission is not amending Rule 15Ba2-6T and Form MA-T other than extending the expiration date for Rule 15Ba2-6T, the Commission believes that the same analysis applies, and continues to believe that Rule 15Ba2-6T, as extended, will not result in a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

## **II. STATUTORY AUTHORITY AND TEXT OF RULE AND AMENDMENTS**

Pursuant to the Exchange Act, and particularly Section 15B (15 U.S.C. 78o-4), the Commission is amending § 240.15Ba2-6T of Title 17 of the Code of Federal Regulations in the manner set forth below.

### **List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements, Municipal advisors, Temporary registration requirements.

### **TEXT OF RULE AND AMENDMENTS**

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

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<sup>24</sup> See 15 U.S.C. 78w(a)(2).

<sup>25</sup> See *id.*

<sup>26</sup> See Interim Release, *supra* note 6 at 54475.

**PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT  
OF 1934**

1. The general authority citation for Part 240 continues 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, 78o, 78o-4, 78p, 78q, 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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**§ 240.15Ba2-6T [Amended]**

2. In § 240.15Ba2-6T, remove the words “December 31, 2011” and add, in their place, the words “September 30, 2012”.

By the Commission.

Kevin M. O’Neill  
Deputy Secretary

December 21, 2011