

**Office of Thrift Supervision**

Department of the Treasury

*Deputy Director, Examinations, Supervision, and Consumer Protection*

1700 G Street, N.W., Washington, DC 20552

July 27, 2007

**MEMORANDUM FOR:** CHIEF EXECUTIVE OFFICERS

**FROM:** Timothy T. Ward *Timothy T. Ward*  
Deputy Director, Examinations, Supervision & Consumer Protection

**SUBJECT:** Notification Requirements for Certain Activities

On October 13, 2006 the President signed into law S. 2856, the Financial Services Regulatory Relief Act of 2006 (FSRRA). One of the provisions of the FSRRA is an amendment to Section 3(a)(34) of the Securities Exchange Act of 1934 ('34 Act)<sup>1</sup>. Section 3(a)(34) of the '34 Act provides a definition of the term "appropriate regulatory agency." The amendment to the '34 Act added OTS as an appropriate regulatory agency for certain activities, which include, but are not limited to:

- Municipal securities dealer
- Transfer agent

Because of the amendment to the '34 Act, OTS is implementing notification requirements for savings associations (as defined in Section 3(b) of the Federal Deposit Insurance Act<sup>2</sup>), subsidiaries or departments or divisions of savings associations, or savings and loan holding companies, that are conducting either of the above listed activities.

**Municipal Securities Dealer**

A municipal securities dealer includes a savings association, including a separately identifiable department or division of a savings association,<sup>3</sup> a savings and loan holding company, and any subsidiary of a savings association that is engaged in any of the following activities:

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<sup>1</sup> Title IV, Section 401(a)(2)

<sup>2</sup> 12 U.S.C. 1813(b)

<sup>3</sup> MSRB Rule G-1(a) provides that a separately identifiable department or division of a bank, as such term is used in Section 3(a)(30) of the '34 Act, is that unit of the bank which conducts all of the activities of the bank relating to the conduct of business as a municipal securities dealer, provided that:

1. Underwriting, trading, and sales of municipal securities;
2. Financial advisory and consultant services for issuers in connection with the issuance of municipal securities;
3. Processing and clearance activities with respect to municipal securities;
4. Research and investment advice with respect to municipal securities (as they relate to (1) and (2));
5. Any activities other than those specifically enumerated above which involve communication, directly or indirectly, with public investors in municipal securities (as they relate to (1) and (2)); or
6. Maintenance of records pertaining to the activities described in (1) through (5) above<sup>4</sup>.

Municipal fund securities are a unique class of municipal securities. State or local governments issue municipal fund securities. Two of the more common municipal fund securities are 529 college savings plans and local government investment pools. 529 college savings plans are designed by states to provide a tax-advantaged means of saving for college. Local government investment pools are designed by states or local governments to provide investment vehicles for public funds of local government entities.

Before the enactment of FSRRA, savings associations, including a separately identifiable department or division of a savings association, savings and loan holding companies, and any subsidiaries of savings associations, acting as a municipal securities dealer were required to register with the SEC on Form MSD<sup>5</sup>. Now that OTS is an “appropriate regulatory agency”, OTS is seeking OMB approval to utilize Form MSD so that savings associations, savings and loan holding companies and subsidiaries of savings associations intending to engage in municipal securities dealer activities will file Form MSD with both the SEC and OTS. Savings associations, savings and loan holding companies, and subsidiaries of savings associations intending to engage in municipal securities dealer activities and those already engaging in municipal securities dealer activities should provide notice to OTS. Notice should be provided to Grovetta Gardineer, Managing Director, Examinations & Supervision Policy, Office of Thrift Supervision, 1700 G Street N.W., Washington D.C., 20552.

### **Transfer Agent**

The term “transfer agent” is defined in the ’34 Act at 3(a)(25). The definition refers to any

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- (1) 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 securities dealer activities, including the supervision of all bank employees engaged in the performance of such activities; and
  - (2) There are separately maintained in or separately extractable from such unit’s own facilities or the facilities of the bank, all of the records relating to the bank’s municipal securities dealer activities, and further provided that 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 Board.

<sup>4</sup> MSRB Rule G-1(b)(1)-(6)

<sup>5</sup> Form MSD (application for registration as a municipal securities dealer)

entity that engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in:

1. Countersigning such securities upon issuance;
2. Monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar;
3. Registering the transfer of such securities;
4. Exchanging or converting such securities; or
5. Transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates.

Acting as a transfer agent for a savings association's own securities that are required to be registered under Section 12(g)(1) of the '34 Act or for other registered securities, is considered under OTS regulations to be acting in a fiduciary capacity and requires fiduciary powers<sup>6</sup>.

Before the enactment of FSRRA, savings associations, savings and loan holding companies, and any subsidiaries of savings associations performing the functions of a transfer agent with respect to registered securities were required to register with the SEC on Form TA-1<sup>7</sup> in accordance with 17 C.F.R. § 240.17Ac2-1. Now that OTS is an "appropriate regulatory agency", OTS is seeking OMB approval to utilize Form TA-1 so that savings associations, savings and loan holding companies, and any subsidiaries of savings associations intending to engage in transfer agent activities will file Form TA-1 with OTS. Savings associations already engaging in transfer agent activities and those intending to engage in transfer agent activities must have or apply for fiduciary powers. Savings associations, savings and loan holding companies, and any subsidiaries of savings associations already engaging in transfer agent activities and those intending to engage in transfer agent activities should provide notice to OTS. Notice should be provided to Grovetta Gardineer, Managing Director, Examinations & Supervision Policy, Office of Thrift Supervision, 1700 G Street N.W., Washington D.C., 20552.

Savings associations, savings and loan holding companies, and any subsidiaries of savings associations already engaging in transfer agent activities should note that the SEC has recently amended its transfer agent rules. The amended rules, with an effective date of January 11, 2007, require all transfer agents (including savings associations) to file Form TA-2<sup>8</sup> electronically through the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Form TA-2, covering the 2006 reporting period, must have been filed electronically on the SEC's EDGAR system by March 31, 2007<sup>9</sup>.

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<sup>6</sup> OTS regulations at 12 C.F.R. § 550.30(e)

<sup>7</sup> Form TA-1 (uniform form for registration as a transfer agent and for amendment to registration)

<sup>8</sup> Form TA-2 (Form for reporting activities of transfer agents)

<sup>9</sup> 71 FR 74698, 74700 (December 12, 2006)

## **Government Securities Brokers or Dealers**

Although savings associations acting as government securities brokers or dealers were not addressed in FSRRA, OTS is reiterating notice filing requirements for savings associations engaging in these activities.

A government securities broker or dealer is defined in Section 3(a)(43) or (44) of the '34 Act. In general, this term refers to any entity regularly engaged in the business of effecting transactions in government securities for its own account or the account of others.

Savings associations that hold themselves out as a government securities broker or interdealer broker or actively solicit purchases or sales of government securities on an agency basis are not exempt from the provisions of the '34 Act and the regulations of the Department of the Treasury.<sup>10</sup>

Savings associations that effect transactions in government securities described below are exempted under Part 401 of the Department of Treasury regulations and need not file Form G-FIN<sup>11</sup>:

1. Handling U.S. Savings Bond transactions, including a qualified issuing or paying agent, or forwarding requests for transactions;
2. Submitting tenders or subscriptions for purchase on original issue of U.S. Treasury securities for the account of customers on a fully disclosed basis;
3. Effecting fewer than 500 government securities brokerage transactions per year;
4. Effecting all government securities brokerage transactions (other than those in (1) and (2)) pursuant to a contractual arrangement with a registered government securities broker or dealer under which the transacting government securities broker or dealer offers securities services on or off the premises of the financial institution, provided certain conditions are met;
5. Selling or purchasing in a fiduciary capacity; and
6. Selling and subsequent repurchase and the purchase and subsequent resale of government securities pursuant to a repurchase or reverse repurchase agreement.

Any savings association that is a government securities broker or dealer must file Form G-FIN with OTS. Copies of the Form G-FIN should be sent to Grovetta Gardineer, Managing Director, Examinations & Supervision Policy, Office of Thrift Supervision, 1700 G Street N.W., Washington D.C. 20552.

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<sup>10</sup> 17 C.F.R. Part 400

<sup>11</sup> 17 C.F.R. § 401.1 – 401.4 – Form G-FIN (Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities)

If you have questions, please contact Judi McCormick, Director, Consumer Protection and Specialty Programs at (202) 906-5636 or [judi.mccormick@ots.treas.gov](mailto:judi.mccormick@ots.treas.gov) or John Rudolph, Trust Policy Specialist at (202) 906-6153 or [john.rudolph@ots.treas.gov](mailto:john.rudolph@ots.treas.gov).