

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**[Release No. 34-67901; File No. S7-19-10]**

**RIN 3235-AK69**

**Extension of Temporary Registration of Municipal Advisors**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final 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 (and consequently Form MA-T) will sunset from September 30, 2012, to September 30, 2013. Under the amendment, all temporary registrations submitted pursuant to Rule 15Ba2-6T also will expire no later than September 30, 2013.

**DATES:** Effective Date: September 30, 2012. The expiration of the effective period of interim final temporary Rule 15Ba2-6T (17 CFR 240.15Ba2-6T) and Form MA-T (17 CFR 249.1300T) is delayed from September 30, 2012, to September 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Molly Kim, Senior Special Counsel, Office of Market Supervision, at (202) 551-5644; Yue Ding, Attorney-Adviser, Office of Market Supervision, at (202) 551-5842; Mary N. 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, Commission, 100 F Street, NE, Washington, DC 20549-7010.

**SUPPLEMENTARY INFORMATION:** The Commission is extending the expiration date for interim final temporary Rule 15Ba2-6T and Form MA-T 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

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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.

registration requirement by completing Form MA-T<sup>5</sup> through the Commission's public website.<sup>6</sup> 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 Rule 15Ba2-6T, as initially adopted, all temporary registrations submitted pursuant to that rule would have expired 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. Also, as initially adopted, Rule 15Ba2-6T itself would have expired on December 31, 2011. On December 21, 2011, however, the Commission amended Rule 15Ba2-6T to extend the date on which that rule

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

<sup>6</sup> See Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) ("Interim Release"). The Commission received seven comment letters on the Interim 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 (December 20, 2010), 76 FR 824 (January 6, 2011) ("Proposing Release").

and Form MA-T would sunset from December 31, 2011, to September 30, 2012.<sup>8</sup> Accordingly, as amended, all temporary registrations submitted pursuant to Rule 15Ba2-6T will expire no later than September 30, 2012. Further, existing Rule 15Ba2-6T will expire on September 30, 2012.

As stated in the Interim Release and the Extension Release, the Commission believes that providing a temporary registration process for municipal advisors, pursuant to an interim final temporary rule, is necessary and appropriate, is consistent with the intent of Congress in enacting Section 975 of the Dodd-Frank Act, and can provide investors and municipal entities with basic and important information while the Commission considers a permanent registration program.<sup>9</sup> As noted above, however, Rule 15Ba2-6T and Form MA-T, as extended, will expire on September 30, 2012. Accordingly, the Commission has determined that it is necessary and appropriate to extend the expiration date of Rule 15Ba2-6T and Form MA-T to September 30, 2013.

The extension will 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 that establishes another manner of registration of municipal advisors, prescribes a form for such purpose, and develops an electronic registration system. The 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

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<sup>8</sup> See Securities Exchange Act Release No. 66020 (December 21, 2011), 76 FR 80733 (December 27, 2011) (“Extension Release”). In the Extension Release, the Commission inadvertently omitted a reference to Subpart N and 17 CFR 249.1300T in the “Statutory Authority and Text of Rule and Amendments” section. As such, Subpart N, which consists of 17 CFR 249.1300T, was deleted from the Code of Federal Regulations. On July 12, 2012, the Commission adopted a technical amendment to restore Subpart N and 249.1300T to Title 17 of the Code of Federal Regulations. See Securities Exchange Act Release No. 66020A (July 12, 2012), 77 FR 42176 (July 18, 2012).

<sup>9</sup> See Interim Release, *supra* note 6, at 54466 and Extension Release, *supra* note 8, at 80733-34.

regime. The Commission notes that it is adopting the amendment to Rule 15Ba2-6T only to extend the expiration date of that rule and, consequently, the expiration date of Form MA-T. The Commission is not making any other amendments to Rule 15Ba2-6T or Form MA-T.

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, 2013. The Commission is also amending Rule 15Ba2-6T(f) to provide that the interim final temporary rule will expire on September 30, 2013. Thus, absent further action by the Commission, Rule 15Ba2-6T and Form MA-T will expire on September 30, 2013 at 11:59 p.m. Eastern Time.

As previously noted in the Extension Release, the Commission has considered the seven comment letters received on the Interim Release and, given the limited nature of this extension and the Commission's ongoing process of considering permanent rules for the registration of municipal advisors, the Commission is not making any other changes to Rule 15Ba2-6T and Form MA-T.<sup>10</sup> Making other changes to the temporary registration regime could require municipal advisors relying on the temporary rule and form to make adjustments or amendments to their operations or forms that otherwise may be applicable only until the permanent regime becomes effective. 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.

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<sup>10</sup> See Extension Release, supra note 8, at 80734.

The amendments to Rule 15Ba2-6T will be effective on September 30, 2012. 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 the temporary municipal advisor registration regime will not affect the substantive provisions of Rule 15Ba2-6T and Form MA-T. The extension will merely allow municipal advisors to continue to comply with the statutory registration requirement and thus continue to operate as municipal advisors until a permanent registration regime becomes effective. Extending the expiration date of Rule 15Ba2-6T and Form MA-T also will prevent a regulatory gap from developing between the temporary and permanent registration regimes. The extension, consequently, is designed to be temporally limited in scope until the Commission establishes a permanent registration regime for municipal advisors. For these reasons, and the reasons discussed throughout this release, the Commission believes that there is good cause to extend the expiration date of Rule 15Ba2-6T and Form MA-T to September 30, 2013 and to find that notice and solicitation of comment on the extension is impracticable, unnecessary, or contrary to the public interest.<sup>13</sup>

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

<sup>12</sup> See 5 U.S.C. 553(b)(3)(B).

<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

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

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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.

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 and Form MA-T.<sup>17</sup> Since the Commission is not amending Rule 15Ba2-6T and Form MA-T other than to extend the expiration date, the Commission believes that the same general analysis will continue to apply for the period of the extension. However, the Commission notes that allowing municipal advisors to continue to comply with the statutory registration requirement until a permanent registration regime becomes effective and preventing a regulatory gap from developing between the temporary and permanent registration regimes are important benefits.

Since the Commission is only extending the expiration date for Rule 15Ba2-6T and Form MA-T and is not substantively changing them, 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 180<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 and Form MA-T, see Interim Release, supra note 6, at 54474-75. See also Extension Release, supra note 8, at 80734-35.

<sup>18</sup> The Commission notes that in the Interim Release, it 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. In the Extension Release, the Commission estimated that, as a result of the extension of Rule 15Ba2-6T and Form MA-T, approximately 162 new municipal advisors will register between January 1, 2012, and September 30, 2012, at a total labor cost of approximately \$168,000. See Extension Release, supra note 8, at 80735. With regard to the 162 new municipal advisors and the municipal advisors already registered pursuant to Rule 15Ba2-6T, the Commission estimated that, between January 1, 2012, and September 30, 2012, there will be approximately 160 amendments and withdrawals at a total labor cost of approximately \$22,000. See id.

<sup>19</sup> The Commission estimates that, between October 1, 2012, and September 30, 2013, there will be approximately 15 initial registrations per month, which is the average number of initial registrations the Commission has received per month between January 2011 and July 2012.



advisors will register between October 1, 2012, and September 30, 2013, at a total labor cost of approximately \$198,000.<sup>20</sup> With regard to the 180 new municipal advisors and the municipal advisors already registered pursuant to Rule 15Ba2-6T, the Commission estimates that, between October 1, 2012, and September 30, 2013, there will be approximately 96<sup>21</sup> amendments and withdrawals at a total labor cost of approximately \$13,000.<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

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<sup>20</sup> 180 (estimated number of initial registrations) × 2.5 hours (estimated time to complete Form MA-T) = 450 hours; 450 hours × \$279 (hourly rate for a Compliance Manager) = \$125,550. The \$279 per hour figure for a Compliance Manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2011, 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. 180 (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) × \$400 (hourly rate for outside legal services) = \$72,000. This is based on an estimated \$400 per hour cost for outside legal services. This is the same estimate used for the Commission's consolidated audit trail rule. See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012). \$125,550 + \$72,000 = \$197,550. 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.

<sup>21</sup> The Commission estimates the number of amendments and withdrawals based on the number of amendments to, and withdrawals from, registration on Form MA-T that the Commission received as of July 31, 2012. Specifically, between September 2010 and July 2012, the Commission received 192 amendments and withdrawals on Form MA-T, or an average of approximately 8 amendments and withdrawals each month. The Commission estimates that for the 12 months between October 1, 2012 and September 30, 2013, the Commission will continue to receive an average of 8 amendments and withdrawals each month, or 96 amendments and withdrawals in total.

<sup>22</sup> 96 (estimated number of amendments and withdrawals) × 0.5 hours (estimated time to amend Form MA-T) = 48 hours; 48 hours × \$279 (hourly rate for a Compliance Manager) = \$13,392. See Interim Release, supra note 6, at 54473-74. The estimated burden for each municipal advisor to complete an amended Form MA-T remains unchanged from the Interim Release. The \$279 per hour figure for a Compliance Manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2011, 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.

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 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 and Form MA-T on efficiency, competition, and capital formation.<sup>26</sup> Since the Commission is not amending Rule 15Ba2-6T and Form MA-T other than to extend their expiration date, the Commission believes that the same analysis applies and continues to believe that Rule 15Ba2-6T and Form MA-T, 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 and restating § 249.1300T of Title 17 of the Code of Federal Regulations in the manner set forth below.

### **List of Subjects in 17 CFR Parts 240 and 249**

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

### **Text of Rule and Amendments**

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

<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.

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

**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, 78c-3, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 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, 12 U.S.C. 5221(e)(3), and Sec. 939A, Pub. L. 111-203, 124 Stat. 1376, (2010), unless otherwise noted.

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**§ 240.15Ba2-6T [Amended]**

2. In § 240.15Ba2-6T, remove the words “September 30, 2012” wherever they appear and add, in their place, the words “September 30, 2013”.

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**PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934**

3. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

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4. Subpart N, consisting of § 249.1300T, continues to read as follows:

**Subpart N – Forms for Registration of Municipal Advisors**

**§ 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).

[Note: The text of Form MA-T does not, and the amendments will not, appear in the Code of Federal Regulations.]

By the Commission.

Elizabeth M. Murphy  
Secretary

September 21, 2012