

RESCINDED

Transmittal – See OCC 2020-11

OCC Bulletin 2013-36 | December 12, 2013

Registration of Municipal Advisors: Dodd-Frank Act Section 975, SEC Final Rule, Registration of Municipal Advisors

Summary

This OCC bulletin alerts national banks and federal savings associations (collectively, banks) that the U.S. Securities and Exchange Commission (SEC) has issued its final rule on the registration of municipal advisors. This bulletin rescinds OCC Bulletin 2010-38, “Dodd-Frank Act Section 975 and SEC Interim Final Temporary Rule,” September 28, 2010.

Highlights

- The SEC’s final rule requires municipal advisors to register permanently with the SEC.
- The final rule does not provide a general blanket exemption for banks.
- Banks should analyze the application of this final rule to their operations. Banks meeting the definition of municipal advisor must file Form MA-T with the SEC and then, when directed, file Form MA. Banks are subject to a fiduciary duty standard with regard to any municipal entity they advise under the rule.

To

Chief Executive Officers of All National Banks and Federal Savings Associations, Department and Division Heads, All Examining Personnel, and Other Interested Parties

Note for Community Banks

This bulletin applies to all national banks and federal savings associations that meet the definition of a “municipal advisor” as defined by the SEC in its final rule. The SEC has stated that banks do not have to register to the extent they provide advice on certain identified banking products and services, such as deposit accounts, extensions of credit, sweep accounts, or bond indenture trustee services. Community banks should analyze the application of the rule to their operations.

Background

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ amended section 15B(a) of the Securities Exchange Act to make it unlawful for municipal advisors to provide certain advice to or to solicit municipal entities or certain other persons without registering with the SEC. On September 8, 2010, the SEC issued an interim final temporary rule implementing a temporary registration regime for municipal advisors. On November 12, 2013, the SEC published a final rule establishing a permanent registration regime for municipal advisors.² The final rule becomes effective on January 13, 2014.

The final rule does not provide a general blanket exemption for banks. The SEC has stated that banks do not have to register to the extent they provide advice on certain identified

banking products and services, such as deposit accounts, extensions of credit, sweep accounts, or bond indenture trustee services. This tailored exemption does not apply to banks that 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, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or if they undertake a solicitation of a municipal entity or an obligated person.

As defined by the Securities Exchange Act, “municipal financial products” are municipal derivatives, guaranteed investment contracts, and “investment strategies.” According to the SEC, a person providing advice with respect to “investment strategies” has to register only if such advice relates to (1) the investment of proceeds of municipal securities, (2) the investment of municipal escrow funds, or (3) municipal derivatives. An “obligated person” essentially means an entity such as a non-profit university or non-profit hospital that borrows the proceeds from a municipal securities offering and is obligated by contract or other arrangement to repay all or some portion of the amount borrowed.

Banks should analyze the application of the final rule to their operations. Banks meeting the “municipal advisor” definition must file Form MA-T with the SEC, if they have not already done so, and are subject to a fiduciary duty standard with regard to any municipal entities they advise under the rule. Municipal advisors that register through Form MA-T under the temporary regime are required to file Form MA under the permanent regime on a rolling basis in the latter half of 2014, as set forth in a separate release.³ After September 30, 2014, banks that are required to register must do so under the permanent regime, using Form MA.

Further Information

Please contact David Barfield, National Bank Examiner, Credit and Market Risk, at (202) 649-6396; or David Stankiewicz, Senior Attorney, Securities and Corporate Practices, at (202) 649-7299 or (202) 649-6770.

John C. Lyons Jr.

Senior Deputy Comptroller and Chief National Bank Examiner

Related Link:

- [Final Rule Release No. 34-70462 \(PDF\)](#)

¹ Pub. L. No. 111-203, 124 Stat. 1376, 1915, section 975 (July 21, 2010).

² See SEC Release 34-70462 (September 20, 2013), 78 *Fed. Reg.* 67468 (November 12, 2013).

² See SEC Release 34-70468 (September 23, 2013), 78 *Fed. Reg.* 59814 (September 30, 2013).