

[Corrected to conform to Federal Register version]

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**Release No. 34-71288; File No. S7-45-10**

**RIN 3235-AK86**

**Registration of Municipal Advisors; Temporary Stay of Final Rule**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; stay.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is staying temporarily Rules 15Ba1-1 through 15Ba1-8 and Rule 15Bc4-1 (“Rules”) under the Securities Exchange Act of 1934 and Forms MA, MA-I, MA-W, and MA-NR (“Forms”) until July 1, 2014 and making conforming, non-substantive amendments to Rule 15Ba1-8 regarding recordkeeping requirements to conform the dates referenced in certain provisions of that rule to the July 1, 2014 date (the “Amendment”). The effective date for the Rules and Forms was January 13, 2014. This stay of the Rules and Forms means that persons are not required to comply with the Rules and Forms until July 1, 2014. The Amendment is the only action the Commission is taking in this release with respect to the Rules and Forms. Therefore, the phased-in compliance period that begins on July 1, 2014, for the requirement to use the Forms to register as municipal advisors under the Rules remains unchanged.

**DATES:** Effective [Insert Date of Filing at the Federal Register], 17 CFR 240.15Ba1-1 through 15Ba1-8 and 240.15Bc4-1 and 17 CFR 249.1300, 249.1310, 249.1320, and 249.1330 are stayed until July 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** John Cross, Director; Jessica Kane, Senior Special Counsel to the Director; Rebecca Olsen, Attorney Fellow; Mary Simpkins, Senior Special Counsel; Edward Fierro, Attorney-Adviser; or Cori Shepherd, Attorney-Adviser; Office of Municipal Securities, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010. Contact phone number: (202) 551-5680

**SUPPLEMENTARY INFORMATION:**

**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.

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

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

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

On September 20, 2013, the Commission issued Rules and Forms to provide for municipal advisor registration under a permanent registration regime.<sup>4</sup> The effective date for the Rules and Forms was January 13, 2014. The Commission provided a phased-in compliance period, beginning on July 1, 2014, for the requirement to use the Forms to register as municipal advisors under the Rules. Municipal advisors currently are subject to the statutory regime under Section 15B of the Exchange Act, which imposes on municipal advisors a fiduciary duty to municipal entities, and the temporary registration regime under which municipal advisors are required to register with the Commission on Form MA-T under the interim final temporary Rule 15Ba2-6T.

Market participants have requested additional time before the Rules and Forms apply to them to address a number of issues regarding implementation of and compliance with the Rules, including, among other things, adapting their policies and procedures, developing supervisory practices and internal controls, adapting their account and investment tracking systems, developing recordkeeping procedures, adapting their business models and practices, educating their personnel with respect to this regulatory regime, and developing training programs to establish effective compliance with the Rules.<sup>5</sup>

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<sup>4</sup> See Registration of Municipal Advisors, Release No. 34-70462 (September 20, 2013), 78 FR 67467 (November 12, 2013), available at <http://www.sec.gov/rules/final/2013/34-70462.pdf> (the “Adopting Release”).

<sup>5</sup> See letters from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated November 8, 2013; Karen L. Barr, General Counsel, Investment Adviser Association; Laura L. Grossman, Assistant General Counsel, Investment Adviser Association; Timothy W. Cameron, Managing Director, Asset Management Group, Securities Industry and Financial Markets Association; and Matthew J. Nevins, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, dated January 2, 2014; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 9, 2014; and Cristeena Naser, Vice President and Senior Counsel, Center for Securities, Trust & Investments, American Bankers Association, dated January 10, 2014.

Pursuant to the Amendment, the Commission is staying temporarily the Rules and Forms until July 1, 2014 and making conforming, non-substantive amendments to Rule 15Ba1-8 regarding recordkeeping requirements to conform the dates referenced in certain provisions of that rule to the July 1, 2014 date. The effective date for the Rules and Forms was January 13, 2014. This stay of the Rules and Forms means that persons are not required to comply with the Rules and Forms until July 1, 2014. The Amendment is the only action the Commission is taking in this release with respect to the Rules and Forms.<sup>6</sup>

To provide certainty about the status of the Rules and Forms pending publication in the Federal Register of this release fully staying the Rules and Forms until July 1, 2014, an exemption from the Rules and Forms is hereby ORDERED under Section 36 of the Exchange Act until such publication. For the reasons discussed throughout the release regarding the need to provide market participants additional time to comply with the Rules, the Commission believes that providing this temporary exemption is necessary and appropriate in the public interest and is consistent with the protection of investors.

The Amendment will provide market participants with a limited amount of additional time to analyze, implement and comply with the Rules.<sup>7</sup> The Commission believes that the temporary stay period appropriately balances the goals of protecting

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<sup>6</sup> The Commission is not reopening these Rules and Forms, which were previously adopted as a result of the new registration requirement in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

<sup>7</sup> See Exchange Act Rule 15Ba1-8(a)(3)(ii), (a)(6), (a)(7)(ii), and (b)(2). The Commission also notes that, on January 10, 2014, the staff in the Office of Municipal Securities provided staff guidance, in the form of frequently asked questions (“FAQs”), to address certain questions relating to the advice standard in general, the exemption for responses to requests for proposals and requests for qualifications, the independent registered municipal advisor exemption, the registered investment adviser exclusion, the underwriter exclusion, advice in situations after a municipal securities issuance, remarketing agent services, opinions by citizens in public discourse, the effective date for the Rules, and the compliance period for registering using the final registration forms under the Rules. See Registration of Municipal Advisors Frequently Asked Questions (January 10, 2014), available at <http://www.sec.gov/info/municipal/mun-advisors-faqs.pdf>.

municipal entities, enhancing the quality of municipal advice, and protecting investors in the municipal securities market through an effective municipal advisor registration regime while providing appropriate relief to industry participants that need additional time to understand the scope and application of the Rules and to implement effective compliance with the Rules. The Commission also believes that the stay of the Rules and Forms until July 1, 2014 pursuant to the Amendment is appropriate since July 1, 2014 is the first day of the phased-in compliance period for municipal advisors to comply with the requirement to register as municipal advisors using the Forms under the Rules.

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.<sup>8</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>9</sup> The Rules and Forms are effective beginning January 13, 2014, but the Commission has been made aware of the need for additional time for market participants to analyze, implement, and comply with the Rules, and thus is taking immediate action. In addition, the Commission notes that the Amendment only stays the Rules and Forms until July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms that were subject to notice and public comment and discussed in the Adopting Release. The Amendment merely preserves the status quo until July 1, 2014, which will provide municipal advisors and other municipal market participants with additional time to analyze, implement, and comply with the Rules. For these reasons, and the reasons

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<sup>8</sup> See 5 U.S.C. 553(b).

<sup>9</sup> See 5 U.S.C. 553(b)(3)(B).

discussed throughout this release, the Commission believes that there is good cause to act now to stay the Rules and Forms to July 1, 2014 and to make conforming, non-substantive date changes, and to find that notice and solicitation of comment on the stay is impracticable, unnecessary, or contrary to the public interest.<sup>10</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>11</sup> This requirement, however, does not apply if the agency finds good cause and publishes such cause with the rule.<sup>12</sup> As noted above, the Rules and Forms are effective beginning January 13, 2014, but there is a need for immediate action by the Commission to provide additional time for market participants to analyze, implement, and comply with the Rules. In addition, this Amendment only stays the Rules and Forms until July 1, 2014 and makes conforming, non-substantive date changes. For these reasons, and the reasons discussed throughout this release, the Commission finds good cause not to delay the effective date of the stay.

The Rules and Forms contain “collection of information” requirements as defined by the Paperwork Reduction Act of 1995, as amended (“PRA”), but the Commission believes that the Amendment only stays the Rules and Forms until July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms. In this regard, the Commission does not believe that this Amendment

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<sup>10</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>11</sup> See 5 U.S.C. 553(d).

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

would require any new or additional “collection of information” as such term is defined in the PRA and will not impose any new burdens or costs upon municipal advisors.

The Commission is sensitive to the costs and benefits of its rules. 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>13</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>14</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>15</sup>

As discussed above, the Amendment only stays the Rules and Forms to July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms. The temporary registration regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the Amendment are measured.

In the Adopting Release, the Commission discussed the costs and benefits of the temporary registration regime and the current state of the municipal advisor market.<sup>16</sup> Since the Commission is only staying the Rules and Forms until July 1, 2014 and making

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<sup>13</sup> See 15 U.S.C. 78c(f).

<sup>14</sup> See 15 U.S.C. 78w(a)(2).

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

<sup>16</sup> See Adopting Release, supra note 4, at Section VIII.C.

conforming, non-substantive date changes, and is not substantively changing any of the Rules or Forms, the Commission believes the discussion of the temporary registration regime in the Adopting Release applies and the Commission does not expect additional significant costs or effects on efficiency, competition, or capital formation to result from the stay. The Commission also continues to believe that the Rules and Forms, as stayed, will not result in a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission considered the alternatives of not staying the Rules and Forms, or providing a longer or shorter stay period. However, for the reasons discussed above, the Commission believes that providing the temporary stay until July 1, 2014 appropriately balances the goals of protecting municipal entities, enhancing the quality of municipal advice, and protecting investors in the municipal securities market through an effective municipal advisor registration regime while providing appropriate relief to industry participants that need additional time to understand the scope and application of the Rules and to implement effective compliance with the Rules.

## **II. Statutory Authority and Text of Rule and Amendments**

Pursuant to the Exchange Act, and particularly Sections 15B (15 U.S.C. 78o-4,) and Section 36 (15 U.S. C. 78mm(a)), the Commission is amending § 240.15Ba1-8 as set forth below.

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

Reporting and recordkeeping requirements.



## **Text of Rule and Amendments**

For the reasons set out above, 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, 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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#### **§ 240.15Ba1-8 [Amended]**

2. Section 240.15Ba1-8 is amended:
  - a. In paragraph (a)(3)(ii), by removing the phrase “January 13, 2014” and adding in its place “July 1, 2014”;
  - b. In paragraph (a)(6), by removing the phrase “January 13, 2014” and adding in its place “July 1, 2014”;
  - c. In paragraph (a)(7)(ii), by removing the phrase “January 13, 2014” and adding in its place “July 1, 2014”;

- d. In paragraph (b)(2), by removing the phrase “January 13, 2014” and adding in its place “July 1, 2014”.

**§§ 240.15Ba1-1 through 240.15Ba1-8 [Stayed]**

3. Sections 240.15Ba1-1 through 240.15Ba1-8 are stayed until July 1, 2014.

**§ 240.15Bc4-1 [Stayed]**

4. Section 240.15Bc4-1 is stayed until July 1, 2014.

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

5. 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.

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**§§ 249.1300, 249.1310, 249.1320, and 249.1330 [Stayed]**

6. Sections 249.1300, 249.1310, 249.1320, and 249.1330 are stayed until July 1, 2014.

By the Commission.

Elizabeth M. Murphy  
Secretary

Date: January 13, 2014