



PUBLIC FINANCE/SECURITIES AND FUTURES REGULATORY UPDATE

Extension of Temporary Registration Rule for Municipal Advisors

The Securities and Exchange Commission (the “Commission” or “SEC”) is amending Rule 15Ba2-6T, which provides for the temporary registration of municipal advisors under Section 15B of the Securities Exchange Act of 1934 (“Exchange Act”)¹ to extend the date on which the Rule will terminate from December 31, 2011 to September 30, 2012 (the “Extension of Temporary Registration”).² The amendment will take effect on December 31, 2011.

As a result, the registration of any municipal advisor who is temporarily registered pursuant to the Rule as of December 31, 2011 will be automatically extended without the need for further affirmative action by the municipal advisor. Temporary registrations will expire on the earliest of the following events: (1) the date that the municipal advisor’s registration is approved or disapproved by the SEC pursuant to a final permanent rule for the registration of municipal advisors; (2) the date on which the municipal advisor’s temporary registration is rescinded by the SEC; or (3) September 30, 2012.

Of note, the Extension of Temporary Registration does not address any points of substance raised by the SEC in its previously proposed final registration regime for municipal advisors. Those proposals, which were issued on December 20, 2010, were met with significant negative comment and criticism.³ The fact that the SEC has, one year later, determined not to adopt a final set of rules but instead to extend temporary Rule 15Ba2-6T for an additional nine months suggests to us that the SEC will likely be proposing a significantly modified final registration regime sometime during the first half of 2012.

Although the SEC has not provided any further clarification as to the scope of the term “municipal advisor,” we recommend that clients that provide advice to municipal entities or obligated persons, but have not yet registered, consider whether registration would be appropriate. Under Section 15B of the Exchange Act, registration as a municipal advisor generally is required if a person provides advice to municipal entities or obligated persons in connection with the

- issuance of municipal securities,
- use of guaranteed investment contracts,

¹ Effective October 1, 2010, Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 15B of the Exchange Act to establish a new registration requirement for “municipal advisors.” Persons subject to the municipal advisor registration requirements are also required to become members of the Municipal Securities Rulemaking Board.

² Exchange Act Release No. 66020 (December 21, 2011); <http://www.sec.gov/rules/interim/2011/34-66020.pdf>

³ Exchange Act Release No. 63576, 76 Fed. Reg. 824 (Dec. 20, 2010). For information regarding the SEC’s previously proposed permanent registration regime for municipal advisors, see our January 14, 2011 and January 25, 2011 client updates available at <http://www.sidley.com/SidleyUpdates/Detail.aspx?news=4661> and <http://www.sidley.com/SidleyUpdates/Detail.aspx?news=4685>.

- use of a derivatives product, or
- investment of proceeds from an offering of municipal securities.

In addition, a person may be required to register as a municipal advisor if the person solicits, for direct or indirect compensation, a municipal entity or obligated person to retain or engage (1) a broker-dealer or municipal advisor for or in connection with the foregoing types of advice or (2) an investment adviser to provide investment advisory services to or on behalf of a municipal entity.

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