

Newsletters

MCNEES CLIENT ALERT

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Dodd-Frank Update - SEC Proposes Final Rules for Municipal Advisor Registration

by Robert Bertram

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") requires municipal advisors to register with the United States Securities and Exchange Commission ("SEC"). Previously, municipal advisors were largely unregulated. To address the Dodd-Frank Act, the SEC placed a temporary registration process and rules in effect last fall, and on December 20, 2010 proposed a permanent registration process and accompanying rules. It is currently seeking comments from interested parties before it adopts the final rules. While the SEC's registration process is not particularly burdensome as it presently exists, and is not expected to become burdensome under the final rules once adopted, the SEC's proposed rules are worth watching and possibly deserve comment. This is because of the possible adoption by the SEC of final rules that include a far-reaching interpretation of activity that constitutes the business of being a municipal advisor and the registration requirement that goes with it.

Under the Dodd-Frank Act, a municipal advisor is anyone who provides advice on municipal financial products either to a municipal entity or to someone involved in the issuance of municipal securities. SEC Staff has noted that they interpret the term municipal financial product to include plans, programs, or pools of assets that invest funds held by or on behalf of a municipal entity. Because of the business that they do, certain banks, trust companies and others may be deemed to be doing this and, consequently, required to register as municipal advisors. We suspect that this will come as a surprise to a lot of people. Banks, trusts and others might not think of themselves as being in the business of municipal advisory services, yet the SEC specifically calls out banks in its proposed rules as needing to register if they engage in activities that trigger registration. While the SEC's proposed rules run for over 230 pages, they do not clarify how to determine whether such activities constitute municipal advising. The proposed rules do, though, clearly signal the SEC's intent to adopt a broad reading of what constitutes municipal advisory services and, consequently, requires registration.

The SEC is not limiting their reach to banks and trusts. Lawyers and accountants might be deemed to be engaged in municipal advisory activities, and triggering the registration requirements of the Dodd-Frank Act, if they stray from "traditional" advice and services.

A review of the SEC's website reveals that relatively few banks or trust companies have registered as municipal advisors. While it is possible the SEC's final rules may ultimately exempt banks and trusts, a wait and see approach may be costly. It is easily possible that some institutions may later be deemed in violation of Dodd-Frank for failing to register, or not registering in a timely manner. This is because registration was required as of October 1, 2010, pursuant to the SEC's temporary rules adopted under the Dodd-Frank Act. For those required to register with the SEC, registration is also required with the Municipal Securities Rulemaking Board. Those registrations were due as of December 31, 2010.

This is a rapidly evolving and dynamic area. If you have any questions, need assistance in evaluating whether you should

register under Dodd-Frank, or if you are interested in submitting a comment on the proposed rules, please contact [Robert Bertram](#) at 717-237-5228, or any member of the [Financial Services Group](#) of McNees Wallace & Nurick LLC.

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