

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Registration of Municipal Advisors**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) amended Section 15B of the Securities Exchange Act of 1934 (“Exchange Act”) to require municipal advisors to register with the Securities and Exchange Commission (the “Commission”). To enable municipal advisors to temporarily satisfy this requirement, the Commission adopted an interim final temporary rule, Exchange Act Rule 15Ba2-6T, and Form MA-T, effective October 1, 2010.<sup>1</sup> On September 18, 2013, the Commission adopted Exchange Act Rules 15Ba1-1 through 15Ba1-8 and 15Bc4-1, and Forms MA, MA-I, MA-W, and MA-NR to establish a permanent registration regime for municipal advisors and impose certain recordkeeping requirements on such advisors.<sup>2</sup>

Rule 15Ba1-2 requires each firm applying for registration with the Commission as a municipal advisor to file electronically with the Commission Form MA and, with respect to each natural person associated with the municipal advisor firm and engages in municipal advisory activities on its behalf, Form MA-I.

Rule 15Ba1-4 requires that notice of withdrawal from registration as a municipal advisor be filed electronically with the Commission on Form MA-W.

Rule 15Ba1-5 requires municipal advisors to amend Form MA annually; amend Form MA and Form MA-I whenever any information previously provided therein becomes inaccurate; report succession of registration on Form MA; and file Form MA-I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engaged in municipal advisory activities on its behalf.

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<sup>1</sup> To enable municipal advisors to continue to register under the temporary registration regime until the applicable compliance date for permanent registration, the Commission extended Rule 15Ba2-6T to December 31, 2014. See Extension of Temporary Registration of Municipal Advisors, Exchange Act Release No. 70468 (September 23, 2013), 78 FR 59814 (September 30, 2013). The Office of Management and Budget (“OMB”) control number is 3235-0659.

<sup>2</sup> See Registration of Municipal Advisors, Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468 (November 12, 2013) (the “Release”). The OMB control number is 3235-0681.

Rule 15Ba1-6 provides that each non-resident municipal advisor shall, at the time of its application, furnish to the Commission for itself and for each non-resident general partner, non-resident managing agent, and non-resident natural person associated with the municipal advisor who engages in municipal advisory activities on behalf of the municipal advisor Form MA-NR, which appoints an agent in the United States for the service of process, as well as an opinion of counsel on Form MA stating that the municipal advisor can, as a matter of law, provide the Commission with access to its books and records as required by law and submit to inspection and examination by the Commission.

Form MA-I requires each municipal advisory firm to obtain and retain a written consent to service of process from each natural person engaged in municipal advisory activities on its behalf.

Rule 15Ba1-8 requires all registered municipal advisors to maintain, for not less than five years, true, accurate, and current books and records relating to their municipal advisory activities.

Rule 15Ba1-1(d)(3)(vi) exempts from the definition of “municipal advisor” any person engaging in municipal advisory activities in a circumstance in which a municipal entity or obligated person is otherwise represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities, provided that certain written requirements are satisfied.

Rule 15Ba1-1(h)(2) provides that in determining whether or not funds to be invested constitute “municipal escrow investments,” a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such investments, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.

Rule 15Ba1-1(m)(3) provides that in determining whether or not funds to be invested constitute “proceeds of municipal securities,” a person may rely on representations in writing made by a knowledgeable official of a municipal entity or obligated person whose funds are to be invested regarding the nature of such funds, provided that the person seeking to rely on such representations has a reasonable basis for such reliance.

## **2. Purpose and Use of the Information Collection**

Form MA and Form MA-I will help ensure that the Commission can make information about municipal advisors transparent and easily accessible to the investing public, including municipal entities and obligated persons who engage municipal advisors; investors who may purchase securities from offerings in which municipal advisors participated; and other regulators. Further, the information provided on Form MA and Form MA-I will expand the amount of publicly available information about municipal advisors, including conflicts of interest and disciplinary history. Although much of the information required by Form MA is already publicly available with respect to municipal advisors that are already registered with the Commission as investment advisers or broker dealers, many municipal advisors that are not currently registered

with the Commission in another capacity will make this information available for the first time. In addition, while municipal advisors are currently required to disclose disciplinary history for some of their associated persons on Form MA-T, municipal advisors will be required to disclose on Form MA disciplinary history for all associated persons. Consequently, the final rules and forms will allow municipal entities and obligated persons, as well as others, to become more fully informed about municipal advisors in a more efficient manner.

In addition, the requirement that each municipal advisory firm register with the Commission on Form MA and complete Form MA-I with respect to each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf will help ensure that the Commission has information to oversee respondents and their activities in the municipal securities market effectively. In particular, the information provided in Form MA will be used to determine whether to grant a municipal advisor's application for registration or to institute proceedings to determine whether registration should be denied. The information will also be used to focus examinations and aid in risk-based examinations. Moreover, Form MA and Form MA-I will enable the Commission to obtain an accurate estimate of the number of municipal advisors, by size and by municipal advisory activity; analyze data regarding the various types of municipal advisory activities; and evaluate the disciplinary history of all municipal advisors and associated persons, including regulatory, civil, and criminal proceedings.

The requirement that a municipal advisor file amendments to Form MA and Form MA will help ensure the availability of up-to-date information about municipal advisors and their associated persons. In addition, the requirement that a municipal advisor file Form MA-W to withdraw from registration will inform the Commission that a municipal advisor is no longer engaging in municipal advisory activities.

The requirement that a municipal advisor make and keep books and records, including written communications and records of associated persons, will help to ensure that records of the respondent's primary municipal advisory activities, as well as the activities of its associated persons, exist. The Commission and other regulators could potentially request books and records during an examination to evaluate the municipal advisor's compliance with the Exchange Act, the rules thereunder, and MSRB rules, as well as for other regulatory purposes.

The requirement that a non-resident municipal advisor complete Form MA-NR, and furnish Form MA-NR for its non-resident general partners, non-resident managing agents, and associated persons engaged in municipal advisory activities, will help minimize legal or logistical obstacles that the Commission may encounter when attempting to effect service, conserve Commission resources, and avoid potential conflicts of law. The requirement that a non-resident municipal advisor provide an opinion of counsel on Form MA will help ensure that such non-resident municipal advisor can provide access to its books and records and submit to inspection and examination by the Commission.

The requirement that certain written representations and disclosures be made in order for a person to be exempt from the definition of municipal advisor (where a municipal entity or

obligated person is represented by an independent registered municipal advisor with respect to the same aspects of a municipal financial product or an issuance of municipal securities) will allow the Commission staff to determine whether a person engaging in municipal advisory activities has failed to register with the Commission. Further, the information will allow municipal entities and obligated persons to understand whether a person is acting as a municipal advisor. Similarly, the exceptions from the definitions of municipal escrow investments and proceeds of municipal securities for reasonable inquiries will allow the Commission staff to determine whether a person engaging in municipal advisory activities has failed to register with the Commission.

### **3. Consideration Given to Information Technology**

The rules will require applicants and registered municipal advisors to electronically file Forms MA, MA-I, MA-NR, and MA-W through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR"). By requiring submission of information through EDGAR, Commission staff will be able to efficiently retrieve and analyze the data it needs, which should enhance the Commission's ability to carry out its mission with respect to municipal advisory activities effectively. Municipal entities, obligated persons, the general public, and others will also be able to access information about municipal advisors electronically through the Commission's EDGAR system and easily cross-reference information submitted through the Investment Adviser Registration Depository ("IARD") and the Central Registration Depository ("CRD") systems. Information submitted on Form MA and Form MA-I will also be tagged in XML format, which may improve the Commission staff's ability to retrieve and analyze data and could allow municipal entities and obligated persons to perform better research into municipal advisors.

The rules will also require municipal advisors to make and keep books and records relating to its municipal advisory activities. Rule 15Ba1-8(d) permits municipal advisors to maintain and preserve the required records on electronic storage media.

### **4. Duplication**

The Commission recognizes that some of the information that respondents would collect under the relevant registration forms and recordkeeping rules would overlap with information previously collected under other registration regimes or recordkeeping rules. In adopting these rules, the Commission sought to design a registration process that is similar to other registration processes administered by the Commission. The rules are based on rules applicable to broker-dealers and investment advisers; similarly, Form MA is based on Form ADV and Form BD, and Form MA-I is based on Form U4. To the extent market participants are familiar with these existing registration processes, the Commission believes that using similar processes to register municipal advisors will create efficiencies for market participants. In addition, the rules will permit municipal advisors, to the extent that the disclosures required on Form MA have been disclosed on Form ADV or BD, to incorporate such information by reference, which should reduce duplication and costs for some municipal advisors.

The Commission considered but decided not to create a separate registration program for entities that are already registered with the Commission in another capacity. The Commission does not believe that such an approach would achieve the goal of creating a registration system specific to municipal advisors. Form MA, while modeled primarily on Form ADV and Form BD, is designed to capture information regarding the activities of municipal advisors and the markets that they serve that would not otherwise be captured in other forms. This information will permit the Commission to decide whether to grant or deny an application for registration; to manage the Commission's regulatory and examination programs; and to make such information available to the MSRB to better inform its regulation of municipal advisors. In addition, having information about municipal advisors in a single location could improve the municipal advisor selection process.

Further, the Commission believes that, based on the expertise and experience of its enforcement and examinations staff, for purposes of regulation, it is appropriate to collect information regarding the financial industry and other activities of associated persons involved in the municipal securities market, including swap dealers, major swap participants, and engineers and engineering firms. The Commission believes that to allow investment advisers to register as municipal advisors using Form ADV would not provide comparable information about certain associated persons of municipal advisors.

In addition, requiring municipal advisors to file a registration form specifically tailored to their municipal advisory activities is consistent with the broader public interest to make available to the public information about municipal advisors. Absent a form specific to municipal advisors, a municipal entity or obligated person seeking information about a municipal advisor may not realize that the data was available on Form BD or Form ADV. The Commission believes that persons seeking to compile, compare, and analyze data pertaining to the entire universe of registered municipal advisors, and regulators overseeing compliance with the rules and regulations applicable to municipal advisors, should be able to access relevant information easily within one system.

With respect to the recordkeeping requirements, the Commission has reduced duplication by adopting recordkeeping requirements that are consistent with other regulations under the securities laws. The Commission determined not to create a unique recordkeeping requirement for municipal advisors because it expects that many entities already registered with the Commission in another capacity, such as investment advisers and broker-dealers, would likely incur higher, and in many ways redundant, costs to comply with this type of regime. If the Commission established a unique recordkeeping requirement for municipal advisors, the Commission believes that many municipal advisors would incur higher costs due to the inability to leverage experience, systems, and practices developed to comply with the similar recordkeeping practices under federal securities law.

## **5. Effect on Small Entities**

The Commission's rules do not define "small business" or "small organization" for purposes of municipal advisors. The Small Business Act ("SBA") defines small business, for

purposes of entities that provide financial investments and related activities, as a business that had annual receipts of less than \$7 million during the preceding fiscal year and is not affiliated with any person that is not a small business or small organization.<sup>3</sup> The Commission is using the SBA’s definition of small business to define municipal advisors that are small entities for purposes of the RFA and estimates that approximately 619 municipal advisors that would be required to register with the Commission would be small entities subject to the final rules and forms.<sup>4</sup>

The Commission notes that municipal advisors are required by statute to register with the Commission. As such, the final rules and forms would affect municipal advisors required to register with the Commission, including small entities. The Commission does not believe differing compliance or reporting requirements or an exemption from coverage of the final rules and forms, or any part thereof, for small advisors would be appropriate or consistent with investor protection or with the Commission’s understanding of Congress’s intent to have the Commission register municipal advisors and oversee their activities. Because the Commission believes that the protections of Section 15B of the Exchange Act, as amended by Section 975 of the Dodd-Frank Act, are intended to apply equally to clients of both large and small municipal advisory firms, the Commission believes it would be inconsistent with the purposes of the Exchange Act to specify different requirements for small municipal advisors under the final rules and forms. Thus, the final rules and forms are designed to impose only those burdens necessary to accomplish the objectives of the Dodd-Frank Act and minimize any significant adverse impact on small advisors.

## **6. Consequences of Not Conducting Collection**

The collection of information under the final rules and forms is designed to establish a permanent registration regime and establish certain recordkeeping requirements for municipal advisors, as provided in Section 975 of the Dodd-Frank Act. The permanent registration regime will allow the Commission to retrieve and analyze the data it needs more efficiently, which should enhance the Commission’s ability to carry out its mission with respect to municipal

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<sup>3</sup> Under Section 601(3) of the Regulatory Flexibility Act (“RFA”), the term “small business” is defined as having “the same meaning as the term ‘small business concern’ under section 3 of the SBA, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>4</sup> The Commission estimates that 619 respondents to the collection of information for Form MA, Form MA-I, consent to service of process and the books and records requirement will be small entities. In addition, the Commission estimates that 16 and 1 respondents to Form MA-W and Form MA-NR, respectively, will be small entities. Furthermore, the Commission estimates that none of the respondents to the collection of information required under Rules 15Ba1-1(d)(3)(vi), 15Ba1-1(h)(2) and 15Ba1-1(m)(3) will be small entities.

advisory activities effectively. In addition, the permanent registration regime could improve the process through which municipal entities and obligated persons select municipal advisors and incentivize municipal advisors not to engage in misconduct. Absent the collection of information, municipal advisors would not have a permanent mechanism through which to satisfy the requirement in Section 15B of the Exchange Act that they register with the Commission. In addition, less frequent collection of this information would not allow the Commission and other regulators; municipal entities and obligated persons; or investors to access up-to-date information about municipal advisors.

## **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Since Rule 15Ba1-5 requires registered municipal advisors to file amendments to Form MA or MA-I if certain information contained in the forms become inaccurate, it is possible for a registered municipal advisor to report information to the Commission more often than quarterly. However, this collection of information is necessary to ensure that the Commission, municipal entities, obligated persons, as well as the public have access to current information regarding municipal advisors registered with the Commission.

Rule 15Ba1-8 requires registered municipal advisors to maintain and preserve books and records for a period of not less than five years, the first two in an easily accessible place. This rule is modeled on Exchange Act Rules 17a-3 and 17a-4, and Rule 204-2 under the Investment Advisers Act, and OMB has previously approved that collection with the same five-year retention period. This collection of information would help to ensure that records exist of the respondent's municipal advisory activities and of its associated persons, and that the records could potentially be requested by the Commission and other regulators during an examination to evaluate the municipal advisory's compliance with the Exchange Act, the rules thereunder, and MSRB rules, as well as for other regulatory purposes.

## **8. Consultations Outside the Agency**

The Commission requested comment on the collection of information requirements in the proposing release in December 2010.<sup>5</sup> Although most of these comment letters neither provided specific suggestions to revise the Commission's estimates, nor provided specific alternative figures or calculations for actual burden hour figures, the Commission considered all comments received prior to publishing the final rule as required by 5 C.F.R. 1320.11(f) and addresses the comments relating to the PRA below.<sup>6</sup>

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<sup>5</sup> See Registration of Municipal Advisors, Exchange Act Release No. 63576 (Dec. 20, 2010), 76 FR 824 (Jan. 6, 2011) (the "Proposal").

<sup>6</sup> Comments received on the proposal are available at <http://www.sec.gov/comments/s7-45-10/s74510.shtml>.

a. Members of Governing Bodies

The Commission also received many comments that opined generally that municipal advisor registration under the proposed rules would be overly burdensome and would impose significant costs that would prove detrimental, especially to local and state municipalities.<sup>7</sup> Among these comments, many noted that local governments would need to hire counsel with expertise in dealing with the Commission to ensure that these officials are properly trained and advised in the intricacies of securities law.<sup>8</sup> In addition, one commenter stated that, for the Proposal's estimate of 21,800 natural persons who will be required to register initially on Form MA-I, the Commission "completely disregards" governing body appointees "who may number in the tens of thousands and will likely require significantly more time and expense per person to ensure compliance than the population of financial professionals assumed in the Proposed Rule."<sup>9</sup> Another commenter contended that Form MA-I, as proposed, contained many questions that are irrelevant to board trustees who are not involved in investment transactions.<sup>10</sup> According to the commenter, completion of the form would likely take longer than three hours, would not benefit the Commission, and would impose unnecessary burdens and costs.<sup>11</sup> Another commenter argued that the registration process would create burdens that would significantly outweigh any benefits created for a citizen to volunteer its services and that the registration requirements, such as paying fees, meeting multiple disclosure requirements, and facing ongoing potential liabilities, could act as a deterrent for volunteers.<sup>12</sup>

Rule 15Ba1-1(d)(3)(ii) now provides an exemption from the definition of municipal advisor for any person serving as a member of a governing body, an advisory board, or a

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<sup>7</sup> See Form Letter A (of the approximately 300 comment letters that addressed the topic of commercial bank regulation, 170 were submitted in Form Letter A format).

<sup>8</sup> See, e.g., letter from Jacqueline M. Kovilaritch, Assistant City Attorney, City of St. Petersburg, Florida, dated January 19, 2011; letter from Dan A. Gray, President, The Industrial Development Authority of the City of Yuma, Arizona, dated January 24, 2011; letter from Bill Longley, Legal Counsel, Texas Municipal League, dated January 30, 2011; and letter from Harlan J. Spiroff, Village Attorney, Village of Wayne, IL, dated February 21, 2011.

<sup>9</sup> See letter from Emily Neuberger, Senior Vice President & General Counsel, Wayne County Airport Authority, Michigan, dated February 14, 2011.

<sup>10</sup> See letter from Gerald Gornish, Chief Counsel, Pennsylvania Public School Employees' Retirement System, Pennsylvania Municipal Retirement System, Jeffrey B. Clay, Executive Director, Pennsylvania Public School Employees' Retirement System, and James B. Allen, Secretary, Pennsylvania Municipal Retirement System, dated February 22, 2011 ("Pennsylvania Public School Employees' Retirement Board Letter").

<sup>11</sup> See *id.*

<sup>12</sup> See letter from Larry E. Naake, Executive Director, National Association of Counties, dated February 16, 2011.



committee of, or acting in a similar official capacity with respect to, or as an official of, a municipal entity or obligated person to the extent that such person is acting within the scope of such person's official capacity, regardless of whether such person is an employee of the municipal entity or obligated person. Accordingly, the Commission has not revised its estimates of the burdens under the final rules and forms to account for members of governing bodies.

b. Form MA and Form MA-I and Amendments Thereto

The Commission received two comment letters that addressed the Commission's burden estimates for Form MA. Both commenters argued that completing Form MA would require significantly more than the estimated 6.5 hours.<sup>13</sup> These commenters did not provide specific figures by which to recalculate the Commission's estimates, making it difficult to evaluate these assertions. While the Commission recognizes that some applicants will require well in excess of 3.5 hours to complete Form MA, the Commission reiterates that the hourly estimate is meant to reflect an average and emphasizes that, as noted in the Proposal, depending on the specific circumstances of the municipal advisory firm, the initial burden to complete Form MA will vary greatly from respondent to respondent.<sup>14</sup> Factors that will affect the initial burden include the size of the municipal advisory firm, the complexity of its business activities, and the amount and type of information to be included on Form MA. Moreover, Form MA generally allows applicants for municipal advisor registration to incorporate by reference information that already has been submitted on other forms under other Commission regulatory requirements. The Commission believes that the ability of registrants to incorporate by reference will lower the hourly average burden for many applicants. The Commission anticipates that, generally, many smaller municipal advisory firms will require less time than the 3.5 hour average burden estimate, while larger municipal advisory firms that offer a variety of services to municipal entities will require considerably more time since they will have more information to disclose in Form MA.

The Commission received one comment that specifically addressed the estimated burden for amendments to Form MA and Form MA-I.<sup>15</sup> Although the commenter did not provide its own burden estimates, it argued that "[a]nnual updates are estimated to require exponentially higher hours to update and maintain the filing."<sup>16</sup> This commenter also did not provide specific figures by which to recalculate the estimates, making it difficult to evaluate these assertions. While the Commission is aware that in some cases (*i.e.*, for some larger municipal advisors with a large number of municipal entity and obligated person clients) annual updates may require

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<sup>13</sup> See letters from JoAnn Bourne, Senior Executive Vice President, Global Treasury Management, Union Bank, N.A., dated February 18, 2011; and Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, dated February 22, 2011 ("Financial Services Roundtable Letter").

<sup>14</sup> See Proposal, 76 FR at 867.

<sup>15</sup> See Financial Services Roundtable Letter.

<sup>16</sup> See *id.*

significantly more time than estimated in the Proposal, the Commission does not agree that regular updates will generally require “exponentially higher” hours. The Commission anticipates that such updates will involve incremental or minor changes in reporting and in most cases will not require large-scale changes to Form MA or Form MA-I. Thus, the Commission believes that its hourly burden estimates for amendments to Form MA and Form MA-I remain reasonable and retains them as originally proposed.

c. Outside Counsel

Another commenter argued that a natural person municipal advisor that registers on Form MA-I would require the assistance of an attorney well-versed in the federal securities laws.<sup>17</sup> Under the final rules, it is the obligation of the municipal advisory firm applying for registration with the Commission to complete Form MA-I for each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities on its behalf. The Commission notes that the information requested on Form MA-I is similar to the information requested on FINRA’s Form U4. The Commission believes that Form MA-I, like Form U4, does not require applicants to possess any specialized knowledge of federal securities laws or retain the services of a securities lawyer. For municipal advisory firms that are not sole proprietors, the Commission does not anticipate that such associated persons will require outside counsel to assist in the completion of Form MA-I. With regard to municipal advisory firms that are sole proprietors, the Commission anticipates that the estimate above regarding firms that would consult with outside counsel to assist in completing Form MA would also include the time required to complete Form MA-I.

One commenter argued that in many cases the Commission’s estimate in the Proposal of \$400 per hour for outside counsel is too low because applicants would generally seek to retain more experienced counsel when faced with the new registration requirements.<sup>18</sup> The commenter also stated its belief that, for a financial institution that provides a variety of services to municipal clients, outside legal fees could easily exceed \$25,000.<sup>19</sup> However, this commenter did not provide specific figures by which to recalculate the Commission’s estimates. The Commission recognizes that, for such larger financial institutions offering diversified services, the outside legal fees will likely exceed the \$400-per-hour estimate. However, the Commission calculated the estimate as an average cost across all municipal advisory firms, and many smaller firms require far less assistance from outside counsel or, in some cases, none at all. The \$400 hourly rate for outside legal counsel, based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters, represents an average from a diverse group of industry sources, reflecting different geographical regions and seniority levels. The Commission notes that, depending on such variables, some outside counsel will

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<sup>17</sup> See letter from Nancy K. Kopp, State Treasurer and Board Chair, College Savings Plans of Maryland, dated February 8, 2011.

<sup>18</sup> See Financial Services Roundtable Letter.

<sup>19</sup> Id.

charge more than \$400 per hour, but many others will charge less. The Commission, therefore, continues to believe that its average hourly cost estimates for all municipal advisory firms to hire outside counsel are accurate and retains them as originally proposed.

d. Recordkeeping Requirements

The Commission received two comment letters that specifically addressed the annual books and records burden estimate. One commenter noted that, although the Commission estimated an annual burden of 181 hours for a municipal advisory firm, the estimate was not broken down further to an individual municipal advisor, such as a retirement board trustee.<sup>20</sup> The Commission notes that, as proposed, the recordkeeping requirement would have applied only to municipal advisory firms and sole proprietors.<sup>21</sup> For this reason, the Commission estimated the books and records burden for municipal advisory firms and sole proprietors only, and the estimate was not intended to reflect any recordkeeping burden for any other persons. Similarly, Rule 15Ba1-8(a), as adopted, states that the books and records requirement applies to “[e]very person registered or required to be registered under section 15B of the Act.” Because natural person municipal advisors, other than sole proprietors, are not required to register with the Commission under the final rules,<sup>22</sup> the books and records requirement does not apply to natural person municipal advisors that are not sole proprietors.

Another commenter asserted that the Commission’s annual books and records burden estimate was “optimistic,” and that, although the estimated burden represents nearly ten percent of a full-time person’s time, the number of hours did not include the cost of storage, and the actual burden would likely be higher.<sup>23</sup> The Commission recognizes that, for larger municipal advisory firms, the final annual burden estimate of 182 hours may be low. The Commission anticipates that, for the purposes of calculating the applicable PRA burden, the annual burden for larger municipal advisory firms that offer a variety of services to municipal entities and have significantly greater volumes of books and records to maintain will be offset in the average by the significantly lower annual burden for smaller firms. Given the relatively smaller size of municipal advisory firms compared to investment advisory firms and the fewer books and records requirements imposed by Rule 15Ba1-8, in the Commission’s view, the annual hourly burden for smaller municipal advisory firms will likely be lower than 182 hours.

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<sup>20</sup> See Pennsylvania Public School Employees’ Retirement Board Letter.

<sup>21</sup> See Proposed Rule 15Ba1-7.

<sup>22</sup> Rule 15Ba1-3, as adopted, exempts from the registration requirement a natural person municipal advisor who is an associated person of an advisor that is registered with the Commission pursuant to Section 15B(a)(2) of the Exchange Act (15 U.S.C. 78o-4(a)(2)) and the rules and regulations thereunder, and engages in municipal advisory activities solely on behalf of a registered municipal advisor.

<sup>23</sup> See letter from UFS Bancorp, dated February 22, 2011.

The Commission also believes that variations in the current records storage systems of respondents make it difficult for the Commission to estimate separately the cost of storage for a typical respondent. To the extent that the additional records required by the recordkeeping requirements can be stored and produced for inspection by electronic means, the additional costs should not be substantial. The books and records estimate, as originally proposed, included storage costs and any needed technology refinements or upgrades.<sup>24</sup> Accordingly, the Commission believes that the 182-hour figure, as an average annual hourly burden across all firms regardless of their size is an appropriate estimate.

## **9. Payment or Gift**

Not applicable.

## **10. Confidentiality**

To the extent the Commission receives confidential information pursuant to submissions on proposed Form MA and Form MA-I, such information would be kept confidential, subject to the provisions of applicable law (e.g., Freedom of Information Act, 5 U.S.C. 552). In particular, the collection of information would include social security numbers (“SSN”) of natural persons in Form MA-I, sole proprietors in Form MA, and control persons of municipal advisory firm applicants who do not have a CRD number in Form MA. This information is necessary in connection with the Commission’s enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act. Specifically, the forms ask for social security numbers to permit the electronic system to distinguish between persons who share the same name. Additionally, Form MA and Form MA-I require applicants to report their private residential addresses.

In the forms, in each place where an applicant is asked to provide a social security number, foreign identity number, private residential address, or a date of birth, guidance is provided stating that the information will not be included in publicly available versions of the form. In addition, at various other places in the forms that ask for an address, the applicant is asked to indicate whether the address provided in response is a private residence and is advised that, if so, the address would not be included in publicly available versions of the form.

## **11. Sensitive Questions**

As discussed above in Item 10, the collection of information includes Personally Identifiable Information (“PII”).<sup>25</sup> In particular, the collection of information would include

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<sup>24</sup> See Proposal, 76 FR at 871.

<sup>25</sup> The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

SSNs of natural persons in Form MA-I, sole proprietors in Form MA only if the sole proprietor does not provide an IRS Employer Identification Number, and control persons of municipal advisory firm applicants in Form MA who do not have a CRD number.<sup>26</sup> This information is necessary in connection with the Commission’s enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act. The Instructions for the Form MA Series inform registrants that a SSN is required for regulatory purposes. Additionally, the Commission is asking for SSNs to permit the electronic system to distinguish between persons who share the same name. Furthermore, the forms inform registrants that the SSN will not be included in publicly available versions of the form. Forms MA and MA-I were promulgated pursuant to the Commission’s rulemaking authority under the Securities and Exchange Act of 1934. We also believe that the treatment of confidential information in Forms MA and MA-I is consistent with the Federal Information Security Management Act of 2002 and the Privacy Act of 1974.

The Commission has also published a System of Records Notice for the collection of information relating to municipal advisors.<sup>27</sup> In addition, a Privacy Impact Assessment (“PIA”) has been completed for the EDGAR system.<sup>28</sup>

## **12. Burden of Information Collection**

- a. Rule 15Ba1-2: Registration of Municipal Advisors and Information Regarding Certain Natural Persons
  - i. Form MA: Application for Municipal Advisor Registration

The initial application for municipal advisor registration under Form MA is a one-time reporting burden. The Commission estimates this collection of information would apply to approximately 910 municipal advisory firms, including sole proprietors, during the first year. This estimate is based on the number of municipal advisors registered with the MSRB as of December 31, 2012. The Commission also estimates that approximately 100 new municipal advisory firms will register on Form MA each year. This estimate is based on Form MA-T registration data. Over

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<sup>26</sup> In addition, the forms will also request data on date of birth, foreign identification number, and private residential addresses.

<sup>27</sup> See Municipal Advisor Records (August 23, 2010, 75 FR 51854), available at <http://www.sec.gov/about/privacy/sorn/secsorn61.pdf>. The Commission notes that the SORN is in the process of being updated to reflect changes between the temporary registration regime and the newly adopted permanent registration regime, including the collection of SSNs and other PII.

<sup>28</sup> The PIA has been included in the PRA submission to OMB.

the three years of the information collection, the total estimated number of Form MA applicants would be 1,110.<sup>29</sup>

The Commission estimates that the average amount of time for a municipal advisory firm to complete Form MA would be 3.5 hours. This figure is based on the estimated average amount of time for a municipal advisory firm to complete Form MA-T and the estimated average amount of time for an investment adviser to complete Part 1A of Form ADV.

In addition, municipal advisory forms will need to complete amendments to Form MA. Amendments to registration are ongoing annual reporting burdens. The Commission estimates that this collection of information would apply to approximately 910 municipal advisory firms, including sole proprietors. The Commission estimates that the average amount of time for a municipal advisor to prepare an annual amendment to Form MA, would be 1.5 hours. This figure is based in part on the burden estimates for Form N-CSR (“Certified Shareholder Report of Registered Management Investment Companies”) and Form N-Q (“Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company”). The Commission further estimates that the average amount of time necessary to prepare any interim updating amendment to Form MA other than the required annual amendment would be 0.5 hours. This figure is based on the burden estimates for an interim updating amendment for Form ADV. The Commission estimates that each municipal advisor would likely amend Form MA two times during the year – one annual amendment and one interim updating amendment. Thus, the Commission estimates that for the total annual reporting burden to amend Form MA would be 1,820 hours,<sup>30</sup> or 5,460 hours over a three-year period. In addition, the annual reporting burden per respondent to amend Form MA per year is 1.64 hours.<sup>31</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden for the completion, amendment and submission of Form MA would be 9,345 hours,<sup>32</sup> or 3,115 hours per year when annualized over three years. The reporting**

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<sup>29</sup> 910 (estimated number of Form MA applicants, first year) + 100 (estimated number of Form MA applicants, second year) + 100 (estimated number of Form MA applicants, third year) = 1,110.

<sup>30</sup> (910 (number of municipal advisors required to submit an annual amendment to Form MA) × 1.5 hours (average estimated time to prepare an annual amendment to Form MA) × 1.0 (number of annual amendments per year)) + (910 (number of municipal advisors required to submit an interim updating amendment to Form MA) × 0.5 hours (average estimated time to prepare an interim updating amendment to Form MA) × 1.0 (number of interim updating amendments per year)) = 1,820 hours per year.

<sup>31</sup> 1,820 (total annual reporting burden to amend Form MA) ÷ 1,110 (municipal advisory firms required to file Form MA, over three years) = 1.64 hours.

<sup>32</sup> (1,110 (municipal advisory firms required to file Form MA, over three years) × 3.5 hours (average estimated time to complete Form MA) + 5,460 (total reporting burden to amend Form MA, over three years)) = 9,345 hours.

**burden per respondent would be approximately 8.42 hours,<sup>33</sup> or approximately 2.806 hours per year when annualized over three years.**

ii. Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities

The initial completion of Form MA-I for each natural person who is a person associated with a municipal advisor on Form MA-I is a one-time reporting burden. The Commission estimates that, during the first year, municipal advisors would need to complete a Form MA-I for approximately 11,250 individuals. This estimate is based on registration data for registered representatives of broker-dealers and investment advisor representatives, as well as comments received. In addition, the Commission estimates municipal advisors would need to submit a new Form MA-I for approximately 950 individuals annually. This estimate is based on Form U-4 registration data. Over the three years of the information collection, the total estimated number of Form MA-I submissions would be 13,150.<sup>34</sup>

The Commission estimates that the average amount of time for a municipal advisory firm to complete each Form MA-I would be three hours. This figure is based on the estimated amount of time for a municipal advisor to complete Form MA-T.

In addition, municipal advisory firms will need to complete amendments to Form MA-I. As discussed above, over three years, the Commission estimates that the total number of Form MA applicants would be 1,110.<sup>35</sup> These firms would need to prepare amendments to Form MA-I for the approximately 11,250 individuals associated with those firms. In addition, the Commission estimates that the annual average amount of time for a municipal advisory firm to complete an updating amendment to Form MA-I would be 0.5 hours. This figure is based on the burden estimates for an updating amendment to Form ADV. The Commission, relying on Form U4 registration data, estimates that a Form MA-I respondent would submit an average of 1.7 updating amendments per year. Thus, the Commission estimates that the total annual burden municipal advisors will incur to prepare updating amendments to Form MA-I would be approximately 9,563 hours.<sup>36</sup>

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<sup>33</sup> 9,345 hours (total burden to complete and amend Form MA, over three years) ÷ 1,110 (municipal advisory firms required to file Form MA, over three years) = 8.42 hours.

<sup>34</sup> 11,250 (estimated number of Form MA-I submissions, first year) + 950 (estimated number of Form MA-I submissions, second year) + 950 (estimated number of Form MA-I submissions, third year) = 13,150.

<sup>35</sup> See *supra* note 29.

<sup>36</sup> 11,250 (estimated number of individuals who are employed at municipal advisors for whom updating amendments to Form MA-I would need to be filed) × 0.5 hours (average estimated time to prepare an updating amendment to Form MA-I) × 1.7 (average number of amendments per year) = 9,562.5 hours per year.

The Commission also estimates that the average number of amendments to Form MA-I that municipal advisory firms would need to submit to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf would be approximately 1,340.<sup>37</sup> Thus, the total annual ongoing burden for municipal advisory firms to amend Form MA-I for this purpose would be approximately 670 hours.<sup>38</sup>

Thus, the Commission estimates that the total annual reporting burden for Form MA-I amendments would be approximately 10,233 hours,<sup>39</sup> or 30,699 hours over a three-year period. This results in an annual reporting burden of 9.2 hours per respondent.<sup>40</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden for the completion, amendment and submission of Form MA-I would be 70,149 hours,<sup>41</sup> or 23,383 hours per year when annualized over three years. The reporting burden per respondent would be approximately 63.2 hours,<sup>42</sup> or approximately 21.06 hours per year when annualized over three years.**

b. Form MA-W: Notice of Withdrawal from Registration as a Municipal Advisor

Withdrawal from municipal advisor registration is a one-time reporting burden. The Commission estimates that there would be approximately 30 withdrawals from Form MA

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<sup>37</sup>  $11,250$  (estimated number of individuals for whom municipal advisors would be required to submit Form MA-I)  $\times$   $(79,722 \div 670,016)$  (average proportion of individuals who fully terminated FINRA registration to all Form U4 registrants from 2008 to present) = 1,338.6.

<sup>38</sup>  $1,340$  (estimated number of persons withdrawing from Form MA-I each year)  $\times$  0.5 hours (average estimated time to prepare an updating amendment to Form MA-I) = 670 hours per year.

<sup>39</sup>  $9,563$  hours (estimated annual burden for municipal advisors to prepare updating amendments to Form MA-I) + 670 hours (estimated annual burden for municipal advisors to amend Form MA-I to indicate that an individual is no longer an associated person of the municipal advisory firm filing the form or no longer engages in municipal advisory activities on its behalf) = 10,233 hours per year.

<sup>40</sup>  $10,233$  (total annual reporting burden for Form MA-I amendments)  $\div$  1,110 (municipal advisory firms required to file and amend Form MA-I, over three years) = 9.2 hours.

<sup>41</sup>  $(13,150$  (Form MA-I submissions, over three years)  $\times$  3.0 hours (average estimated time to complete Form MA-I)) + 30,699 (total annual reporting burden for Form MA-I amendments, over three years) = 70,149 hours.

<sup>42</sup>  $70,149$  hours (total burden to complete and amend Form MA-I, over three years)  $\div$  1,110 (municipal advisory firms required to file Form MA-I, over three years) = 63.197 hours.



registration annually.<sup>43</sup> Over the three years of the information collection, the total estimated number of Form MA-W applicants would be 90.<sup>44</sup>

The Commission estimates that the average amount of time for a municipal advisor to complete Form MA-W would be 0.5 hours. This figure is based on the burden estimates for completing Form ADV-W.

**In summary, the Commission estimates that, over a three-year period, the total one-time reporting burden for the completion of Form MA-W would be 45 hours,<sup>45</sup> or approximately 15 hours per year when annualized over three years. The one-time reporting burden would be 0.5 hours per respondent.<sup>46</sup>**

c. Form MA-NR: Designation of U.S. Agent for Service of Process for Non-Resident

The designation of a U.S. agent for service of process is a one-time reporting burden. The Commission estimates that there would be approximately two non-resident municipal advisory firm applicants and those non-resident municipal advisory firms would need to complete Form MA-NR for 15 non-resident general partner or managing agent applicants during the first year.<sup>47</sup> The municipal advisory firms estimate is based on Form MA-T registration data, and the general partners and managing agents estimate is based on investment adviser registration data. The Commission also estimates that the non-resident municipal advisory firms would file Form MA-NR for 15 non-resident natural persons associated with the municipal advisor who engage in

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<sup>43</sup> This estimate is based on Form MA-T data on the average number of withdrawals on Form MA-T in 2011 (22) and 2012 (24) rounded to the nearest higher multiple of ten.

<sup>44</sup>  $30$  (estimated number of Form MA-W applicants, first year) +  $30$  (estimated number of Form MA-W applicants, second year) +  $30$  (estimated number of Form MA-W applicants, third year) =  $90$ .

<sup>45</sup>  $90$  (estimated number of persons withdrawing from Form MA registration, over three years)  $\times$   $0.5$  hours (average estimated time to complete Form MA-W) =  $45$  hours.

<sup>46</sup>  $45$  hours (total burden to complete Form MA-W, over three years)  $\div$   $90$  (total number of persons withdrawing from Form MA registration, over three years) =  $0.5$  hours.

<sup>47</sup>  $15$  (estimated number of non-resident general partner or managing agent applicants during the first year)  $\div$   $2$  (estimated number of non-resident municipal advisory firms) =  $7.5$  applicants per non-resident municipal advisory firm.

municipal advisory activities on behalf of the municipal advisor.<sup>48</sup> Thus, each non-resident municipal advisory firm would file approximately 16 Form MA-NRs in the first year.<sup>49</sup>

For the ongoing annual number of new Form MA-NR filers, the Commission estimates that only one non-resident municipal advisor each year would have a non-resident general partner, non-resident managing agent, or associated person that would be required to complete a new Form MA-NR.<sup>50</sup> This estimate is based on investment adviser registration data. Over three years, the two non-resident municipal advisor respondents would file approximately 34 Form MA-NR applications.<sup>51</sup>

The Commission estimates that the average amount of time to complete Form MA-NR would be 1.5 hours. This figure is based on the burden estimates for completing Form ADV-NR. Thus, the Commission estimates that the total initial burden to complete Form MA-NR would be approximately 48 hours.<sup>52</sup> The total burden for each non-resident municipal advisory firm would be approximately 24 hours in the first year.<sup>53</sup>

In addition, each non-resident municipal advisor must provide an opinion of counsel on Form MA. The Commission estimates that the average annual reporting burden to provide an opinion of counsel would be three hours. This figure is based on burden estimates for Form 20-F, a form submitted by certain foreign private issuers, which has a similar opinion of counsel requirement to Rule 15Ba1-6(d). The Commission estimates that the total initial internal burden

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<sup>48</sup>  $15$  (estimated number of non-resident natural persons associated with the municipal advisor who engage in municipal advisory activities on behalf of the municipal advisor during the first year)  $\div$   $2$  (estimated number of non-resident municipal advisory firms) =  $7.5$  applicants per non-resident municipal advisory firm.

<sup>49</sup>  $1$  (Form MA-NR completed by the non-resident municipal advisory firms) +  $7.5$  (estimated number of non-resident general partners or managing agents) +  $7.5$  (estimated number of non-resident natural persons associated with the municipal advisor who engages in municipal advisory activities on behalf of the municipal advisor) =  $16$ .

<sup>50</sup> For PRA purposes, the Commission assumes that the one new non-resident municipal advisor per year would not be a natural person and would thus be required to provide opinion of counsel.

<sup>51</sup>  $32$  (estimated number of Form MA-NR applicants, first year) +  $1$  (estimated number of Form MA-NR applicants, second year) +  $1$  (estimated number of Form MA-NR applicants, third year) =  $34$ .

<sup>52</sup>  $32$  (persons expected to file Form MA-NR, first year)  $\times$   $1.5$  hours (average estimated time to complete Form MA-NR) =  $48$  hours. See *infra* note 56 and accompanying text for discussion of annual burden after the first year.

<sup>53</sup>  $48$  (total initial burden to complete Form MA-NR)  $\div$   $2$  (total number of respondent non-resident municipal advisory firms) =  $24$  hours.

to provide an opinion of counsel would be six hours.<sup>54</sup> Thus, the Commission estimates that the total initial burden to complete the estimated number of Form MA-NR submissions and provide an opinion of counsel would be 54 hours.<sup>55</sup>

The Commission estimates that after the first year, the annual burden to (i) complete a new Form MA-NR would be approximately 1.5 hours<sup>56</sup> and (ii) provide an opinion of counsel would be approximately three hours.<sup>57</sup>

**In summary, the Commission estimates that, over a three-year period, the total one-time reporting burden for the completion of Form MA-NR would be 63 hours,<sup>58</sup> or approximately 21 hours per year when annualized over three years. Thus, the total annual burden for each non-resident municipal advisory firm would be approximately 10.5 hours.<sup>59</sup>**

d. Consent to Service of Process from Certain Associated Persons

The consent to service of process for certain associated persons is a one-time recordkeeping burden. The Commission estimates that 910 municipal advisory firms will need to complete a written consent to service of process from each natural person engaged in municipal advisory activities on its behalf.<sup>60</sup> Over three years, the Commission estimates that 1,110 municipal advisory firms will need to provide this consent to service of process.<sup>61</sup>

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<sup>54</sup> 2 (non-resident municipal advisory firms expected to provide opinion of counsel) × 3.0 hours (average estimated time to provide an opinion of counsel) = 6 hours.

<sup>55</sup> 48 hours (total initial burden to complete of Form MA-NR) + 6 hours (total initial internal burden to provide an opinion of counsel) = 54 hours.

<sup>56</sup> 1 (persons expected to file Form MA-NR each year) × 1.5 (average estimated time to complete Form MA-NR) = 1.5 hours.

<sup>57</sup> 1 (municipal advisory firms expected to provide an opinion of counsel) × 3.0 (average estimated time to provide opinion of counsel) = 3.0 hours.

<sup>58</sup> 32 (persons expected to file Form MA-NR in the initial year) × 1.5 hours (average estimated time to complete Form MA-NR) + 1 (estimated number of new Form MA-NR applicants, second year) × 1.5 (average estimated time to complete Form MA-NR) + 1 (estimated number of new Form MA-NR applicants, third year) × 1.5 (average estimated time to complete Form MA-NR) + 6 hours (total internal burden to provide an opinion of counsel, first year) + 3 hours (total internal burden to provide an opinion of counsel, second year) + 3 hours (total internal burden to provide an opinion of counsel, third year) = 63 hours.

<sup>59</sup> 21 (estimated annual burden to complete Form MA-NR) ÷ 2 (estimated number of non-resident municipal advisory firms) = 10.5 hours.

<sup>60</sup> Rule 15Ba1-8(a)(9) will require each municipal advisory firm to retain written consents to service of process from each natural person who is a person associated with the municipal advisor and engages in municipal advisory activities solely on behalf of such

The Commission estimates that each municipal advisory firm would spend approximately one hour to draft a template document to use in obtaining the written consents to service of process, amounting to an initial, one-time burden of approximately 910 hours.<sup>62</sup> The Commission also estimates that, once drafted, each applicant would spend approximately 0.10 hours, to obtain the written consent, amounting to an initial, one-time burden of approximately 1,125 hours.<sup>63</sup> Accordingly, the total one-time burden for all municipal advisory firms to obtain written consents to service of process would be 2,035 hours.<sup>64</sup>

In addition, the Commission estimates that the total ongoing annual burden for firms that would newly register as municipal advisors each year to draft a template document to use in obtaining the written consents to service of process would be approximately 100 hours.<sup>65</sup> The Commission also estimates that the total ongoing annual burden for firms to obtain written consents to service of process from these persons would be approximately 95 hours.<sup>66</sup> Thus, the total ongoing recordkeeping burden for all municipal advisory firms to obtain written consents to service of process would be 195 hours.<sup>67</sup>

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registered municipal advisor. The Commission does not have the information necessary to provide a reasonable estimate regarding the number of sole proprietors that will register with the Commission as municipal advisors because this data is not currently available to the Commission and the Commission is unaware of any such data being publicly available.

<sup>61</sup> See supra note 29.

<sup>62</sup> 910 (estimated number of applicants for municipal advisor registration during the first year) × 1.0 hours (estimated time required to draft a template to use in obtaining the written consents to service of process) = 910 hours.

<sup>63</sup> 11,250 (estimated number of natural persons engaged in municipal advisory activities on behalf of a municipal advisory firm during the first year) × 0.10 hours (estimated time required to obtain the written consents to service of process) = 1,125 hours.

<sup>64</sup> 910 hours (estimated one-time burden for all municipal advisory firms to draft a template to use in obtaining the written consents to service of process) + 1,125 hours (estimated one-time burden for all municipal advisory firms to obtain the written consents to service of process) = 2,035 hours.

<sup>65</sup> 100 (estimated number of new Form MA applicants per year) × 1.0 hours (estimated time required to draft a template to use in obtaining the written consents to service of process) = 100 hours.

<sup>66</sup> 950 (estimated number of new Form MA-I filings per year) × 0.10 hours (estimated time required to obtain the written consents to service of process) = 95 hours.

<sup>67</sup> 100 hours (estimated ongoing annual burden for all firms that would newly register as municipal advisors to draft a template to use in obtaining the written consents to service of process) + 95 hours (estimated ongoing annual burden for municipal advisory firms to obtain written consents to service of process) = 195 hours.

**In summary, the Commission estimates that, over a three-year period, the total recordkeeping burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf would be 2,425 hours<sup>68</sup>, or 808.33 hours per year when annualized over three years. The reporting burden per respondent would be approximately 2.18 hours,<sup>69</sup> or approximately 0.73 hours per year when annualized over three years.**

e. Rule 15Ba1-8: Books and Records to Be Made and Maintained by Municipal Advisors

The maintenance of books and records is an ongoing annual recordkeeping burden. The Commission estimates that this collection of information would apply to approximately 910 municipal advisory firms each year. This estimate is based on the number of municipal advisors registered with the MSRB as of December 31, 2012.

The Commission estimates that the average annual burden for a municipal advisory firm to comply with the recordkeeping requirements would be 182 hours. This figure is based on the estimated annual burden for broker-dealers to comply with Exchange Act Rules 17a-3 and 17a-4, and for investment advisors to comply with Investment Advisers Act Rule 204-2. Thus, the total annual ongoing recordkeeping burden would be 165,620 hours.<sup>70</sup>

**In summary, the Commission estimates that, over a three-year period, the total recordkeeping burden would be 496,860 hours,<sup>71</sup> or 165,620 hours when annualized over three years. The annual recordkeeping burden per respondent would be 182 hours.**

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<sup>68</sup> 2,035 hours (estimated burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf, first year) + 195 (estimated burden to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf, second year) + 195 (estimated burden to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf, third year) = 2,425 hours.

<sup>69</sup> 2,425 hours (total estimated annual burden for all municipal advisory firms to obtain written consents to service of process from each natural person engaged in municipal advisory activities on their behalf, over three years) ÷ 1,110 (estimated number of registered municipal advisory firms, over three years) = 2.18 hours.

<sup>70</sup> 910 (estimated number municipal advisors) × 182 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) = 165,620 hours.

<sup>71</sup> 165,620 hours (estimated total burden to comply with the books and records requirement, first year) + 165,620 hours (estimated total burden to comply with the books and records requirement, second year) + 165,620 hours (estimated total burden to comply with the books and records requirement, third year) = 496,860 hours.

f. Rule 15Ba1-1(d)(3)(vi): Exemption When a Municipal Entity or Obligated Person is Represented by an Independent Registered Municipal Advisor

The written representations required pursuant to the exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor is a one-time third-party disclosure burden. Based on data of the number of underwriters that participated in negotiated deals of municipal securities in 2012, the Commission estimates this collection of information would apply to approximately 210 persons.

The Commission estimates that each person seeking to rely on this exemption would need approximately one hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of 210 hours.<sup>72</sup>

There will also be an ongoing burden each time a person seeks to rely on this exemption. The Commission estimates that, on average, there are approximately 8,770 negotiated deals involving an underwriter each year.<sup>73</sup> The Commission also estimates that a person seeking to rely on this exemption would need approximately 0.25 hours to obtain a written representation from a municipal entity or obligated person, amounting to an annual ongoing burden of approximately 2,193 hours.<sup>74</sup>

The person seeking to rely on this exemption must make certain disclosures to the municipal entity or obligated person. The Commission estimates that each person seeking to rely on this exemption would need approximately one hour to draft the required disclosure, amounting to an initial, one-time burden of approximately 210 hours.<sup>75</sup>

**In summary, the Commission estimates that, over a three-year period, the total one-time third party disclosure burden related to the exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor would be**

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<sup>72</sup>  $210$  (estimated number of persons who will seek to rely on the exemption)  $\times$   $1.0$  hours (estimated time required to draft the written representation) =  $210$  hours.

<sup>73</sup> This estimate represents an average of the number of negotiated deals each year from 2009 through 2012 relying upon data obtained from Thomson Reuters' SDC Platinum database.

<sup>74</sup>  $8,770$  (estimated number of negotiated deals per year)  $\times$   $0.25$  hours (estimated time required to obtain the written representation) =  $2,192.5$  hours.

<sup>75</sup>  $210$  (estimated number of persons who will seek to rely on the exemption)  $\times$   $1.0$  hours (estimated time required to draft the required disclosure) =  $210$  hours. The Commission believes that once these disclosures have been drafted, such language would become part of the standard municipal advice documentation and, accordingly, there would be no further ongoing associated burden.

**6,999 hours,<sup>76</sup> or 2,333 hours per year when annualized over three years. The third party disclosure burden per respondent would be approximately 33.33 hours,<sup>77</sup> or 11.11 hours per year when annualized over three years.**

g. Rule 15Ba1-1(h)(2): Exception to Definition of Municipal Escrow Investments

The written representations required for the exception for reasonable reliance on representations related to municipal escrow investments is a one-time third-party disclosure burden. The Commission believes that state-registered investment advisers with municipal entity clients are the persons most likely to rely on this exception. The Commission estimates that approximately 700 persons may seek to rely on this exception. To calculate this estimate, the Commission staff examined data regarding investment advisers with assets under management under \$100 million as of May 3, 2010.

The Commission estimates that each person seeking to rely on this exception would need approximately one hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of approximately 700 hours.<sup>78</sup> In addition, the Commission estimates that, once drafted, a person seeking to rely on this exception would need approximately 0.25 hours to obtain a written representation from its client. Based on responses to Form ADV, the Commission estimates that persons that would seek to rely on this exception have approximately 8,620 clients that are municipal entities. Thus, the Commission estimates that the burden to obtain the written representation would be 2,155 hours.<sup>79</sup>

**In summary, the Commission estimates that, over a three-year period, the one-time total third-party disclosure burden for all persons to rely on the exception for reasonable reliance on representations related to municipal escrow investments would be 2,855**

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<sup>76</sup> (210 hours (estimated time to draft a template document to use in obtaining the written representation, first year) + 2,193 hours (estimated time to obtain a written representation from a municipal entity or obligated person, first year) + 210 hours (estimated time to draft the required disclosure, first year)) + 2,193 (estimated time to obtain a written representation from a municipal entity or obligated person, second year) + 2,193 (estimated time to obtain a written representation from a municipal entity or obligated person, third year) = 6,999 hours.

<sup>77</sup> 6,999 hours (total burden related to the exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor, over three years) ÷ 210 (estimated number of persons who will seek to rely on the exemption, over three years) = 33.33 hours.

<sup>78</sup> 700 (estimated number of persons who will seek to rely on the exception) × 1.0 hours (estimated time required to draft the written representation) = 700 hours.

<sup>79</sup> 8,620 (estimated number of clients from which written representation will be obtained) × 0.25 hours (estimated time required to obtain the written representation) = 2,155 hours.

hours,<sup>80</sup> or 951.67 hours per year when annualized over three years. The one-time third-party third party disclosure burden would be approximately 4.08 hours per respondent,<sup>81</sup> or approximately 1.36 hours per year when annualized over three years.

h. Rule 15Ba1-1(m)(3): Exception to Definition of Proceeds of Municipal Securities

The written representations required for the exception for reasonable reliance on representations related to proceeds of municipal securities is a one-time third-party disclosure burden. The Commission believes state-registered investment advisers with clients that are municipal entities or certain pooled investment vehicles in which municipal entities invest are the persons most likely to rely on this exception. Based on responses to Form ADV, the Commission estimates that approximately 880 persons may seek to rely on this exception.

The Commission estimates that each person seeking to rely on this exception would need approximately one hour to draft a template document to use in obtaining the written representation, amounting to an initial, one-time burden of approximately 880 hours.<sup>82</sup> In addition, the Commission estimates that, once drafted, a person seeking to rely on this exception would need approximately 0.25 hours to obtain a written representation from its client. Based on responses to Form ADV, the Commission estimates that persons that would seek to rely on this exception have approximately 25,420 clients that are state or municipal government entities or that are pooled investment vehicles (other than registered investment companies) with municipal entity investors. Thus, the Commission estimates that the burden to obtain the written representation would be 6,355 hours.<sup>83</sup>

**In summary, the Commission estimates that, over a three-year period, the total one-time third-party disclosure burden for all persons to rely on the exception for reasonable reliance on representations related to proceeds of municipal securities would be 7,235**

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<sup>80</sup> 700 hours (estimated time to draft a template document to use in obtaining the written representation, over three years) + 2,155 hours (estimated time required to obtain the written representations from clients, over three years) = 2,855 hours.

<sup>81</sup> 2,855 hours (total burden related to the exception for reasonable reliance on representations related to municipal escrow investments, over three years) ÷ 700 (estimated number of persons who will seek to rely on the exception, over three years) = 4.08 hours.

<sup>82</sup> 880 (estimated number of persons who will seek to rely on the exception) × 1.0 hours (estimated time required to draft the written representation) = 880 hours.

<sup>83</sup> 25,420 (estimated number of clients from which written representation will be obtained) × 0.25 hours (estimated time required to obtain the written representation) = 6,355 hours.



hours,<sup>84</sup> or 2,411.67 hours per year when annualized over three years. The one-time third-party disclosure burden would be approximately 8.22 hours<sup>85</sup> per respondent, or approximately 2.74 hours per year when annualized over three years.

i. Summary of Hourly Burdens

The table below summarizes the Commission’s estimates of the total hourly reporting burden for all respondents under Rules 15Ba1-1 to 15Ba1-8.

	<u>Nature of Information Collection Burden</u>	<u>Annualized Hourly Burden Estimate Industry-Wide</u>	<u>Annualized Hourly Burden Estimate Per Respondent</u>
a.	Form MA: Application for Municipal Advisor Registration	3,115	2.81
b.	Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities	23,383	21.1
c.	Form MA-W: Notice of Withdrawal from Registration as a Municipal Advisor	15	0.5
d.	Form MA-NR: Designation of U.S. Agent for Service of Process for Non-Resident	21	10.5
e.	Consent to Service of Process for Certain Associated Persons	809	0.73
f.	Rule 15Ba1-8: Books and Records to be Made and Maintained by Municipal Advisors	165,620	182

<sup>84</sup> 880 hours (estimated time to draft a template document to use in obtaining the written representation, over three years) + 6,355 hours (estimated time required to obtain the written representations from clients, over three years) = 7,235 hours.

<sup>85</sup> 7,235 hours (total burden related to the exception for reasonable reliance on representations related to proceeds of municipal securities, over three years) ÷ 880 (estimated number of persons who will seek to rely on the exception, over three years) = 8.22 hours.

	<b><u>Nature of Information Collection Burden</u></b>	<b><u>Annualized Hourly Burden Estimate Industry-Wide</u></b>	<b><u>Annualized Hourly Burden Estimate Per Respondent</u></b>
g.	Rule 15Ba1-1(d)(3)(vi): Exemption When a Municipal Entity or Obligated Person is Represented by an Independent Registered Municipal Advisor	2,333	11.11
h.	Rule 15Ba1-1(h)(2): Exception to Definition of Municipal Escrow Investments	952	1.36
i.	Rule 15Ba1-1(m)(3): Exception to Definition of Proceeds of Municipal Securities	2,412	2.74
<b>TOTAL</b>		<b>198,660</b>	<b>232.85</b>

### 13. Costs to Respondents

#### a. Rule 15Ba1-2: Registration of Municipal Advisors and Information Regarding Certain Natural Persons

##### i. Form MA: Application for Municipal Advisor Registration

The Commission believes that some municipal advisory firms would seek outside counsel to help them comply with the requirements of the final rules and to complete Form MA. For PRA purposes, the Commission assumes that all 910 municipal advisory firms registering on Form MA in the first year would, on average, consult with outside counsel for one hour, and would cost \$364,000 for all municipal advisory firms.<sup>86</sup> As discussed above, the Commission estimates that approximately 100 new municipal advisory firms will register on Form MA each year. Accordingly, the Commission estimates that the ongoing cost for all municipal advisory firms to hire outside counsel would be approximately \$40,000.<sup>87</sup>

<sup>86</sup> 910 (estimated number of municipal advisory firms that would hire outside counsel) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × \$400 (hourly rate for an outside attorney) = \$364,000. The hourly cost estimate of \$400 on average for an attorney is based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters. See Proposal, 76 FR 871.

<sup>87</sup> 100 (estimated number of new municipal advisory firms that would hire outside counsel each year) × 1 hour (average estimated time spent by outside counsel to help a municipal advisory firm comply with the rule) × \$400 (hourly rate for an outside attorney) = \$40,000. See *supra* note 86 (calculating the hourly rate for an outside attorney).

**In summary, the Commission estimates that, over a three-year period, the total labor cost for all municipal advisory firms to seek outside counsel to complete Form MA would be approximately \$444,000,<sup>88</sup> or \$148,000 per year when annualized over three years. The total labor cost per respondent would be approximately \$400,<sup>89</sup> or approximately \$133.33 when annualized over three years.**

ii. Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities

Not applicable.

b. Form MA-W: Notice of Withdrawal from Registration as a Municipal Advisor

Not applicable.

c. Form MA-NR: Designation of U.S. Agent for Service of Process for Non-Resident

The Commission believes that non-resident municipal advisors would seek outside counsel to comply with the opinion of counsel requirements of Form MA-NR. The Commission estimates this would add \$900 in outside legal costs per respondent.<sup>90</sup> Thus, the Commission estimates that the total initial cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel would be \$1,800.<sup>91</sup> The ongoing annual cost

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<sup>88</sup> 1,110 (number of registered municipal advisory firms, over three years) × \$400 (hourly rate for an outside attorney) = \$444,000. See supra note 86 (calculating the hourly rate for an outside attorney).

<sup>89</sup> \$444,000 (total labor cost to seek outside counsel, over three years) ÷ 1,110 (estimated number of registered municipal advisory firms, over three years) = \$400.

<sup>90</sup> The \$900 figure is based on an hourly cost estimate of \$400 on average for an outside attorney, which is based on Commission conversations with law firms that regularly assist regulated financial firms with compliance matters. See Investment Advisers Act Release No. 3222 (June 22, 2011), 76 FR 39646 (July 6, 2011). Based on previous burden estimates, the Commission estimated that outside counsel will take, on average, 2.25 hours to assist in preparation of the opinion of counsel, for an average cost of \$900 per respondent.

<sup>91</sup> 2 (non-resident municipal advisory firms expected to provide opinion of counsel, first year) × \$900 (average estimated cost to hire outside counsel to provide an opinion of counsel) = \$1,800.

for non-resident municipal advisors to hire outside counsel as part of providing an opinion of counsel would be approximately \$900.<sup>92</sup>

**In summary, the Commission estimates that, over a three-year period, the total cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel would be approximately \$3,600,<sup>93</sup> or \$1,200 per year when annualized over three years. The total labor cost per respondent would be \$1,800,<sup>94</sup> or \$600 per year when annualized over three years.**

d. Consent to Service of Process from Certain Associated Persons

Not applicable.

e. Rule 15Ba1-8: Books and Records to be Made and Maintained by Municipal Advisors

Not applicable.

f. Rule 15Ba1-1(d)(3)(vi): Exemption When a Municipal Entity or Obligated Person is Represented by an Independent Registered Municipal Advisor

Not applicable.

g. Rule 15Ba1-1(h)(2): Exception to Definition of Municipal Escrow Investments

Not applicable.

h. Rule 15Ba1-1(m)(3): Exception to Definition of Proceeds of Municipal Securities

Not applicable.

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<sup>92</sup> 1 (persons expected to file Form MA-NR each year) × \$900 (average estimated cost to hire outside counsel to provide opinion of counsel) = \$900.

<sup>93</sup> \$1,800 (total cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel, first year) + \$900 (total cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel, second year) + \$900 (total cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel, third year) = \$3,600.

<sup>94</sup> \$3,600 (total labor cost to hire outside counsel as part of providing an opinion of counsel, over three years) ÷ 2 (total number of non-resident municipal advisory firms providing an opinion of counsel, over three years) = \$1,800.

i. Summary of Cost Burdens

The table below summarizes the Commission’s estimate of the annual cost burdens for municipal advisors engaged in municipal advisory activities.

	<b><u>Nature of Information Collection Burden</u></b>	<b><u>Burden Estimate in Dollars Industry-Wide</u></b>	<b><u>Burden Estimate in Dollars Per Respondent</u></b>
a.	Form MA: Application for Municipal Advisor Registration	\$148,000	\$133.33
b.	Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities	N/A	N/A
c.	Form MA-W: Notice of Withdrawal from Registration as a Municipal Advisor	N/A	N/A
d.	Form MA-NR: Designation of U.S. Agent for Service of Process for Non-Resident	\$1,200	\$600
e.	Consent to Service of Process from Certain Associated Persons	N/A	N/A
f.	Rule 15Ba1-8: Books and Records to be Made and Maintained by Municipal Advisors	N/A	N/A
g.	Rule 15Ba1-1(d)(3)(vi): Exemption When a Municipal Entity or Obligated Person is Represented by an Independent Registered Municipal Advisor	N/A	N/A
h.	Rule 15Ba1-1(h)(2): Exception to Definition of Municipal Escrow Investments	N/A	N/A
i.	Rule 15Ba1-1(m)(3): Exception to Definition of Proceeds of Municipal Securities	N/A	N/A
<b>TOTAL</b>		<b>\$149,200</b>	<b>\$733.33</b>

**14. Costs to Federal Government**

There would be no additional costs to the Federal Government.

**15. Reason for Change**

Not applicable. Rules 15Ba1-1 to 15Ba1-8 would be new rules.

**16. Information Collection Planned for Statistical Purposes**

Not applicable. The information collection is not used for statistical purposes.

**17. Approval to Omit the OMB Expiration Date**

We request authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the electronic version of this form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. Collection of Information Employing Statistical Methods**

This collection does not involve statistical methods.