

## Comptroller of the Currency, Treasury

## § 10.2

### § 9.101 Providing investment advice for a fee.

(a) *In general.* The term “fiduciary capacity” at § 9.2(e) is defined to include “investment adviser, if the bank receives a fee for its investment advice.” In other words, if a bank is providing investment advice for a fee, then it is acting in a fiduciary capacity. For purposes of that definition, “investment adviser” generally means a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). Additionally, the qualifying phrase “if the bank receives a fee for its investment advice” excludes those activities in which the investment advice is merely incidental to other services.

(b) *Specific activities—(1) Full-service brokerage.* Engaging in full-service brokerage may entail providing investment advice for a fee, depending upon the commission structure and specific facts. Full-service brokerage involves investment advice for a fee if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*).

(2) *Activities not involving investment advice for a fee.* The following activities generally do not entail providing investment advice for a fee:

(i) Financial advisory and counseling activities, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general;

(ii) Client-directed investment activities (*i.e.*, the bank has no investment discretion) where investment advice and research may be made available to the client, but the fee does not depend on the provision of investment advice;

(iii) Investment advisory activities incidental to acting as a municipal securities dealer;

(iv) Real estate management services provided to other financial institutions;

(v) Real estate consulting services, including acting as a finder in locating, analyzing, and making recommendations regarding the purchase of property, and making recommendations concerning the sale of property;

(vi) Advisory activities concerning bridge loans;

(vii) Advisory activities for homeowners’ associations;

(viii) Advisory activities concerning tax planning and structuring; and

(ix) Investment advisory activities authorized by the OCC under 12 U.S.C. 24(Seventh) as incidental to the business of banking.

[63 FR 6473, Feb. 9, 1998]

## PART 10—MUNICIPAL SECURITIES DEALERS

Sec.

10.1 Scope.

10.2 Filing requirements.

AUTHORITY: 12 U.S.C. 93a, 481, 1462a, 1463, 1464(c), 1818, and 5412(b)(2)(B); 15 U.S.C. 780-4(c)(5) and 78q-78w.

SOURCE: 63 FR 29094, May 28, 1998, unless otherwise noted.

### § 10.1 Scope.

This part applies to:

(a) Any national bank or Federal savings association and separately identifiable department or division of a national bank or Federal savings association (collectively, a national bank or Federal savings association) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

(b) Any person who is associated or will be associated with a national bank or Federal savings association in the capacity of a municipal securities principal or a municipal securities representative, as those terms are defined in Rule G-3 of the Municipal Securities Rulemaking Board (MSRB). MSRB rules may be obtained at [www.msrb.org](http://www.msrb.org).

[63 FR 29094, May 28, 1998, as amended at 73 FR 22242, Apr. 24, 2008; 82 FR 8105, Jan. 23, 2017]

### § 10.2 Filing requirements.

(a) A national bank or Federal savings association shall use Form MSD-4

(Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) for obtaining the information required by MSRB Rule G–7(b) from a person identified in §10.1(b). A national bank or Federal savings association receiving a completed MSD–4 form from a person identified in §10.1(b) must submit this form to the OCC before permitting the person to be associated with it as a municipal securities principal or a municipal securities representative.

(b) A national bank or Federal savings association shall submit Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) to the OCC within 30 days of terminating a person’s association with the national bank or Federal savings association as a municipal securities principal or municipal securities representative.

(c) Forms MSD–4 and MSD–5, with instructions, may be obtained at <http://www.banknet.gov/>.

[63 FR 29094, May 28, 1998, as amended at 63 FR 71343, Dec. 24, 1998; 79 FR 15641, Mar. 21, 2014; 82 FR 8105, Jan. 23, 2017]

## PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

Sec.

11.1 Authority.

11.2 Reporting requirements for registered national banks and Federal savings associations.

11.3 Filing requirements and inspection of documents.

11.4 Filing fees.

**AUTHORITY:** 12 U.S.C. 93a, 1462a, 1463, 1464 and 5412(b)(2)(B); 15 U.S.C. 78j–1(m), 78m, 78n, 78p, 78w, 78l, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

**SOURCE:** 57 FR 46084, Oct. 7, 1992; 57 FR 54499, Nov. 19, 1992, unless otherwise noted.

### § 11.1 Authority.

The Office of the Comptroller of the Currency (OCC) is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (SEC) to administer and enforce the provisions of sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f),

and 16 of the Securities Exchange Act of 1934, as amended (Exchange Act) (15 U.S.C. 78j–1(m), 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), as amended (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), for national banks and Federal savings associations with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the Exchange Act (registered national banks or registered Federal savings associations). Further, the OCC has general rulemaking authority under 12 U.S.C. 93a, 1462a, 1463, and 1464, to promulgate rules and regulations concerning the activities of national banks and Federal savings associations.

[82 FR 8105, Jan. 23, 2017]

### § 11.2 Reporting requirements for registered national banks and Federal savings associations.

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a national bank or Federal savings association whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Exchange Act (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations, and forms adopted by the SEC pursuant to:

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78j–1(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

(2) [Reserved]

(b) *References to the Securities Exchange Commission, SEC, or Commission.* Any references to the “Securities and Exchange Commission,” the “SEC,” or the “Commission” in the rules, regulations and forms described in paragraph (a)(1) of this section with respect to securities issued by registered national banks or registered Federal savings associations shall be deemed to refer to the OCC unless the context otherwise requires.

(c) *References to registration requirements.* For national banks and Federal