

debt obligation or to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization to prescribe any procedure, term, or condition of such initial issuance, to promulgate any rule or regulation governing such initial issuance, or to otherwise regulate in any manner such initial issuance, see section 111 of Pub. L. 103-202, set out as a note under section 78o-5 of this title.

Amendment by section 303(a), (c) of Pub. L. 103-202 not to limit authority of Securities and Exchange Commission, a registered securities association or a national securities exchange under any provision of this chapter, or preclude the Commission or such association or exchange from imposing a remedy or procedure required to be imposed under such amendment, see section 304(b) of Pub. L. 103-202, set out in an Effective Date of 1993 Amendment note under section 78f of this title.

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 78o-4. Municipal securities

(a) Registration of municipal securities dealers

(1)(A) It shall be unlawful for any municipal securities dealer (other than one registered as a broker or dealer under section 78o of this title) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered in accordance with this subsection.

(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.

(2) A municipal securities dealer or municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal securities dealer or municipal advisor and any persons associated with such municipal securities dealer or municipal advisor as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may ex-

tend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a municipal securities dealer or municipal advisor if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal securities dealer or municipal advisor or any person acting on behalf of such municipal securities dealer or municipal advisor, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any broker, dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.

(b) Municipal Securities Rulemaking Board; rules and regulations

(1) The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),¹ which shall perform the duties set forth in this section. The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are

¹ So in original.

hereinafter referred to as “public representatives”); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as “broker-dealer representatives”), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as “bank representatives”), and at least 1 individual who is associated with a municipal advisor (which members are hereinafter referred to as “advisor representatives” and, together with the broker-dealer representatives and the bank representatives, are referred to as “regulated representatives”). Each member of the board shall be knowledgeable of matters related to the municipal securities markets. Prior to the expiration of the terms of office of the members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such members.

(2) The Board shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors. The rules of the Board, as a minimum, shall:

(A) provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons. In connection with the definition and application of such standards the Board may—

(i) appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of busi-

ness organization), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors;

(ii) specify that all or any portion of such standards shall be applicable to any such class; and

(iii) require persons in any such class to pass tests administered in accordance with subsection (c)(7) of this section.

(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

(i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

(C) be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest; and not be designed to permit unfair discrimination among customers, municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers, municipal securities dealers, or municipal advisors, to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the Board, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(D) if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities and advice concerning municipal financial products: *Provided, however, that no person other than a municipal securities broker, municipal securities dealer, municipal advisor, or person associated with such a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled to submit to such arbitration except at his instance and in accordance with section 78cc of this title.*

(E) provide for the periodic examination in accordance with subsection (c)(7) of this section of municipal securities brokers, municipal securities dealers, and municipal advisors to determine compliance with applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker, municipal securities dealer, or municipal advisor.

(F) include provisions governing the form and content of quotations relating to municipal securities which may be distributed or published by any municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(G) prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

(H) define the term “separately identifiable department or division”, as that term is used in section 78c(a)(30) of this title, in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. A separately identifiable department or division of a bank may be engaged in activities other than those relating to municipal securities.

(I) provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

(J) provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board.

(K) establish the terms and conditions under which any broker, dealer, or municipal securities dealer may sell, or prohibit any broker, dealer, or municipal securities dealer from selling, any part of a new issue of municipal securities to a related account of a broker, dealer, or municipal securities dealer during the underwriting period.

(L) with respect to municipal advisors—

(i) prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients;

(ii) provide continuing education requirements for municipal advisors;

(iii) provide professional standards; and

(iv) not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

(3) The Board, in conjunction with or on behalf of any Federal financial regulator or self-regulatory organization, may—

(A) establish information systems; and

(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems from any persons which systems may be developed for the purposes of serving as a depository of information from municipal market participants or otherwise in furtherance of the purposes of the Board, a Federal financial regulator, or a self-regulatory organization, except that the Board—

(i) may not charge a fee to municipal entities or obligated persons to submit documents or other information to the Board or charge a fee to any person to obtain, directly from the Internet site of the Board, documents or information submitted by municipal entities, obligated persons, brokers, dealers, municipal securities dealers, or municipal advisors, including documents submitted under the rules of the Board or the Commission; and

(ii) shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under section 78s(b) of this title.

(4) The Board may provide guidance and assistance in the enforcement of, and examination for, compliance with the rules of the Board to the Commission, a registered securities association under section 78o-3 of this title, or any other appropriate regulatory agency, as applicable.

(5) The Board, the Commission, and a registered securities association under section 78o-3

of this title, or the designees of the Board, the Commission, or such association, shall meet not less frequently than 2 times a year—

(A) to describe the work of the Board, the Commission, and the registered securities association involving the regulation of municipal securities; and

(B) to share information about—

(i) the interpretation of the Board, the Commission, and the registered securities association of Board rules; and

(ii) examination and enforcement of compliance with Board rules.

(7)² Nothing in this section shall be construed to impair or limit the power of the Commission under this chapter.

(8)(A) The Commission shall adopt data standards for information submitted to the Board.

(B) Any data standards adopted under subparagraph (A) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of title 12, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(C) The Commission shall consult market participants in establishing data standards under subparagraph (A).

(D) Nothing in this paragraph may be construed to affect the operation of paragraph (1) or (2) of subsection (d).

(c) Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations

(1) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in contravention of any rule of the Board. A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.

(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal securities dealer or municipal advisor, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, denial, suspension, or revocation, is in the public interest and that such municipal securities dealer or municipal advisor has com-

mitted or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(3) Pending final determination whether any registration under this section shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors or municipal entities or obligated person.³ Any registered municipal securities dealer or municipal advisor may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors or municipal entities or obligated person,³ withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal securities dealer or municipal advisor is no longer in existence or has ceased to do business as a municipal securities dealer or municipal advisor, the Commission, by order, shall cancel the registration of such municipal securities dealer or municipal advisor.

(4) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal securities dealer, or suspend for a period not exceeding 12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

²So in original. No par. (6) has been enacted.

³So in original. Person probably should be plural.

(5) With respect to any municipal securities dealer for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such municipal securities dealer may sanction any such municipal securities dealer in the manner and for the reasons specified in paragraph (2) of this subsection and any person associated with such municipal securities dealer in the manner and for the reasons specified in paragraph (4) of this subsection. In addition, such appropriate regulatory agency may, in accordance with section 1818 of title 12, enforce compliance by such municipal securities dealer or any person associated with such municipal securities dealer with the provisions of this section, section 78q of this title, the rules of the Board, and the rules of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, and transactions in municipal securities. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 1818(b) or 1818(c) of title 12, and the customers of any such municipal securities dealer shall be deemed to be "depositors" as that term is used in section 1818(c) of title 12. Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such municipal securities dealer under any other provision of law.

(6)(A) The Commission, prior to the entry of an order of investigation, or commencement of any proceedings, against any municipal securities dealer, or person associated with any municipal securities dealer, for which the Commission is not the appropriate regulatory agency, for violation of any provision of this section, section 78o(c)(1) or 78o(c)(2) of this title, any rule or regulation under any such section, or any rule of the Board, shall (i) give notice to the appropriate regulatory agency for such municipal securities dealer of the identity of such municipal securities dealer or person associated with such municipal securities dealer, the nature of and basis for such proposed action, and whether the Commission is seeking a monetary penalty against such municipal securities dealer or such associated person pursuant to section 78u-2 of this title; and (ii) consult with such appropriate regulatory agency concerning the effect of such proposed action on sound banking practices and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by such appropriate regulatory agency against such municipal securities dealer or associated person.

(B) The appropriate regulatory agency for a municipal securities dealer (if other than the Commission), prior to the entry of an order of investigation, or commencement of any proceedings, against such municipal securities dealer or person associated with such municipal securities dealer, for violation of any provision of this section, the rules of the Board, or the rules or regulations of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, or transactions in municipal securities shall (i) give notice to the Commission of the identity of such

municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed action and (ii) consult with the Commission concerning the effect of such proposed action on the protection of investors or municipal entities or obligated person³ and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by the Commission against such municipal securities dealer or associated person.

(C) Nothing in this paragraph shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission or the appropriate regulatory agency for a municipal securities dealer to initiate any action of a class described in this paragraph or to affect in any way the power of the Commission or such appropriate regulatory agency to initiate any other action pursuant to this chapter or any other provision of law.

(7)(A) Tests required pursuant to subsection (b)(2)(A)(iii) of this section shall be administered by or on behalf of and periodic examinations pursuant to subsection (b)(2)(E) of this section shall be conducted by—

(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association;

(ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers; and

(iii) the Commission, or its designee, in the case of municipal advisors.

(B) A registered securities association shall make a report of any examination conducted pursuant to subsection (b)(2)(E) of this section and promptly furnish the Commission a copy thereof and any data supplied to it in connection with such examination. Subject to such limitations as the Commission, by rule, determines to be necessary or appropriate in the public interest or for the protection of investors or municipal entities or obligated person,³ the Commission shall, on request, make available to the Board a copy of any report of an examination of a municipal securities broker or municipal securities dealer made by or furnished to the Commission pursuant to this paragraph or section 78q(c)(3) of this title.

(8) The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of this chapter, to remove from office or censure any person who is, or at the time of the alleged violation or abuse was, a member or employee of the Board, who, the Commission finds, on the record after notice and opportunity for hearing, has willfully (A) violated any provision of this chapter, the rules and regulations thereunder, or the rules of the Board or (B) abused his authority.

(9)(A) Fines collected by the Commission for violations of the rules of the Board shall be equally divided between the Commission and the Board.

(B) Fines collected by a registered securities association under section 78o-3(b)(7)⁴ of this title with respect to violations of the rules of the Board shall be accounted for by such registered securities association separately from other fines collected under section 78o-3(b)(7)⁴ of this title and shall be allocated between such registered securities association and the Board, and such allocation shall require the registered securities association to pay to the Board ½ of all fines collected by the registered securities association reasonably allocable to violations of the rules of the Board, or such other portion of such fines as may be directed by the Commission upon agreement between the registered securities association and the Board.

(d) Issuance of municipal securities

(1) Neither the Commission nor the Board is authorized under this chapter, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

(2) The Board is not authorized under this chapter to require any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: *Provided, however,* That the Board may require municipal securities brokers and municipal securities dealers or municipal advisors to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this chapter.

(e) Definitions

For purposes of this section—

(1) the term “Board” means the Municipal Securities Rulemaking Board established under subsection (b)(1);

(2) the term “guaranteed investment contract” includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

(3) the term “investment strategies” includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments;

(4) the term “municipal advisor”—

(A) means a person (who is not a municipal entity or an employee of a municipal entity) that—

(i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

(ii) undertakes a solicitation of a municipal entity;

(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in any of clauses (i) through (iii)⁵ of subparagraph (A); and

(C) does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 77b(a)(11) of this title), any investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice;

(5) the term “municipal financial product” means municipal derivatives, guaranteed investment contracts, and investment strategies;

(6) the term “rules of the Board” means the rules proposed and adopted by the Board under subsection (b)(2);

(7) the term “person associated with a municipal advisor” or “associated person of an advisor” means—

(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions);

(B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and

(C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor;

(8) the term “municipal entity” means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

⁴See References in Text note below.

⁵So in original. Subpar. (A) does not contain a cl. (iii).

(C) any other issuer of municipal securities;

(9) the term “solicitation of a municipal entity or obligated person” means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-2]) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; and

(10) the term “obligated person” means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

(June 6, 1934, ch. 404, title I, §15B, as added Pub. L. 94-29, §13, June 4, 1975, 89 Stat. 131; amended Pub. L. 98-38, §4, June 6, 1983, 97 Stat. 207; Pub. L. 100-181, title III, §§318-320, Dec. 4, 1987, 101 Stat. 1256, 1257; Pub. L. 101-429, title II, §205, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101-550, title II, §203(c)(1), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 105-353, title III, §301(b)(9), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 107-204, title VI, §604(c)(1)(B), July 30, 2002, 116 Stat. 796; Pub. L. 111-203, title IX, §§925(a)(2), 929F(a), 975(a)-(e), July 21, 2010, 124 Stat. 1850, 1853, 1915-1921; Pub. L. 117-263, div. E, title LVIII, §5823(a), Dec. 23, 2022, 136 Stat. 3427.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (b)(2), (7), (c)(6)(C), (8), and (d), was in the original “this title”. See References in Text note set out under section 78a of this title.

Section 78o-3(b)(7) of this title, referred to in subsec. (c)(9)(B), was in the original “section 15A(7)”, and was translated as meaning section 15A(b)(7) of act June 6, 1934, to reflect the probable intent of Congress.

The Investment Advisers Act of 1940, referred to in subsec. (e)(4)(C), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables.

The Commodity Exchange Act, referred to in subsec. (e)(4)(C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

2022—Subsec. (b)(8). Pub. L. 117-263 added par. (8).

2010—Subsec. (a)(1). Pub. L. 111-203, §975(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(2), (3). Pub. L. 111-203, §975(a)(2), (3), inserted “or municipal advisor” after “municipal securities dealer” wherever appearing.

Subsec. (a)(4). Pub. L. 111-203, §975(a)(4), substituted “dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors” for “dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers”.

Subsec. (a)(5). Pub. L. 111-203, §975(a)(5), added par. (5).

Subsec. (b)(1). Pub. L. 111-203, §975(b)(1)(C), which directed amendment of third sentence by striking out “initial”, was executed in fourth sentence by striking out “initial” after “office of the” and after “such”, to reflect the probable intent of Congress.

Pub. L. 111-203, §975(b)(1)(B), added second and third sentences and struck out former second sentence which read as follows: “The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer), at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as ‘public representatives’); (B) five individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘broker-dealer representatives’); and (C) five individuals who are associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘bank representatives’).”

Pub. L. 111-203, §975(b)(1)(A), in first sentence, substituted “The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),” for “Not later than one hundred twenty days after June 4, 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the ‘Board’), to be composed initially of fifteen members appointed by the Commission”.

Subsec. (b)(2). Pub. L. 111-203, §975(b)(2)(A), in introductory provisions, inserted “and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors” before period at end of first sentence and struck out “(Such rules are hereinafter collectively referred to in this chapter as ‘rules of the Board’).” before “The rules”.

Subsec. (b)(2)(A). Pub. L. 111-203, §975(b)(2)(B), in introductory provisions, inserted “, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities,” after “sale of, any municipal security” and “and municipal entities or obligated persons” after “protection of investors”, in cl. (i), substituted “municipal securities brokers, municipal securities dealers, and municipal advisors” for “municipal securities brokers and municipal securities dealers” in two places, in cl. (ii), inserted “and” at end, in cl. (iii), substituted period for “; and” at end, and struck out cl. (iv) which read as follows: “provide that persons in any such class other than municipal securities brokers and municipal securities dealers and partners, officers, and supervisory employees of municipal securities brokers or municipal securities dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Board finds appropriate.”

Subsec. (b)(2)(B). Pub. L. 111-203, §975(b)(2)(C), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer) and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number.”

Subsec. (b)(2)(C). Pub. L. 111-203, §975(b)(2)(D), inserted “and municipal financial products” after “municipal securities” the first two places appearing and “, municipal entities, obligated persons,” after “to protect investors” and substituted “among customers, municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors.” for “between customers, issuers, municipal securities brokers, or municipal securities dealers,” and “brokers, municipal securities dealers, or municipal advisors, to regulate” for “brokers or municipal securities dealers, to regulate”.

Subsec. (b)(2)(D). Pub. L. 111-203, §975(b)(2)(E), inserted “and advice concerning municipal financial products” after “transactions in municipal securities” and “municipal advisor,” before “or person associated,” and substituted “that no” for “That no” and “a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled” for “a municipal securities broker or municipal securities dealer may be compelled”.

Subsec. (b)(2)(E). Pub. L. 111-203, §975(b)(2)(F), substituted “municipal securities brokers, municipal securities dealers, and municipal advisors” for “municipal securities brokers and municipal securities dealers” and “municipal securities broker, municipal securities dealer, or municipal advisor” for “municipal securities broker or municipal securities dealer”.

Subsec. (b)(2)(G). Pub. L. 111-203, §975(b)(2)(G), substituted “municipal securities brokers, municipal securities dealers, and municipal advisors” for “municipal securities brokers and municipal securities dealers”.

Subsec. (b)(2)(J). Pub. L. 111-203, §975(b)(2)(H), substituted “each municipal securities broker, municipal securities dealer, and municipal advisor” for “each municipal securities broker and each municipal securities dealer” and inserted “, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board” after “such fees and charges”.

Subsec. (b)(2)(K). Pub. L. 111-203, §975(b)(2)(I), substituted “a related account of a broker, dealer, or municipal securities dealer” for “a municipal securities investment portfolio” and substituted “any broker, dealer, or municipal securities dealer” for “any municipal securities dealer” in two places.

Subsec. (b)(2)(L). Pub. L. 111-203, §975(b)(2)(J), added subpar. (L).

Subsec. (b)(3) to (5), (7). Pub. L. 111-203, §975(b)(3), (4), added pars. (3) to (5) and redesignated former par. (3) as (7).

Subsec. (c)(1). Pub. L. 111-203, §975(c)(1), (2), inserted “, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to

provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person,” after “any municipal security” and inserted at end “A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor’s fiduciary duty or that is in contravention of any rule of the Board.”

Subsec. (c)(2). Pub. L. 111-203, §975(c)(3), inserted “or municipal advisor” after “municipal securities dealer” in two places.

Subsec. (c)(3). Pub. L. 111-203, §975(c)(4), inserted “or municipal entities or obligated person” after “protection of investors” in two places and “or municipal advisor” after “municipal securities dealer” wherever appearing.

Subsec. (c)(4). Pub. L. 111-203, §975(c)(5), which directed amendment of par. (4) by inserting “or municipal advisor” after “municipal securities dealer or obligated person” each place that term appears, could not be executed because such term does not appear.

Pub. L. 111-203, §925(a)(2), substituted “12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,” for “twelve months or bar any such person from being associated with a municipal securities dealer.”

Subsec. (c)(6)(B). Pub. L. 111-203, §975(c)(6), inserted “or municipal entities or obligated person” after “protection of investors”.

Subsec. (c)(7)(A)(iii). Pub. L. 111-203, §975(c)(7)(A), added cl. (iii).

Subsec. (c)(7)(B). Pub. L. 111-203, §975(c)(7)(B), inserted “or municipal entities or obligated person” after “protection of investors”.

Subsec. (c)(8). Pub. L. 111-203, §929F(a), substituted “any person who is, or at the time of the alleged violation or abuse was, a member or employee” for “any member or employee”.

Subsec. (c)(9). Pub. L. 111-203, §975(c)(8), added par. (9).

Subsec. (d)(2). Pub. L. 111-203, §975(d)(2), which directed amendment of par. (2) by inserting “or municipal advisors” before “to furnish”, was executed by making the insertion before “to furnish” the second place appearing, to reflect the probable intent of Congress.

Pub. L. 111-203, §975(d)(1), substituted “through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise” for “through a municipal securities broker or municipal securities dealer or otherwise”.

Subsec. (e). Pub. L. 111-203, §975(e), added subsec. (e). 2002—Subsec. (c)(2), (4). Pub. L. 107-204 substituted “, or is subject to an order or finding,” for “or omission” and “(H), or (G)” for “or (G)”.

1998—Subsec. (c)(4). Pub. L. 105-353 substituted “convicted of any offense” for “convicted by any offense” in first sentence.

1990—Subsec. (c)(2), (4). Pub. L. 101-550 substituted “(A), (D), (E), or (G)” for “(A), (D), or (E)”.

Subsec. (c)(6)(A). Pub. L. 101-429 substituted “, the nature” for “and the nature” and “proposed action, and whether the Commission is seeking a monetary penalty against such municipal securities dealer or such associated person pursuant to section 78u-2 of this title; and” for “proposed action and”.

1987—Subsec. (b)(2)(C). Pub. L. 100-181, §318, substituted “municipal securities dealers, to regulate” for “municipal security dealers, to regulate” “purposes of this chapter” for “purposes of this chapter or the securities”, and “burden on competition” for “burden or competition”.

Subsec. (c)(4). Pub. L. 100-181, §319, substituted new first sentence for former first sentence which read as

follows: “The Commission, by order, shall censure any person associated, or seeking to become associated with, a municipal securities dealer or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).”

Subsec. (c)(6)(A). Pub. L. 100-181, §320, substituted “Board” for “board”.

1983—Subsec. (b)(1)(A). Pub. L. 98-38, §4(a), inserted “(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)” after “securities dealer”.

Subsec. (b)(2)(B). Pub. L. 98-38, §4(b), inserted “(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)” after “broker, dealer, or municipal securities dealer”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(a)(2) and 929F(a) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 975(a)–(e) of Pub. L. 111-203 effective Oct. 1, 2010, see section 975(i) of Pub. L. 111-203, set out as a note under section 78o of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (a) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

RULEMAKING

Pub. L. 117-263, div. E, title LVIII, §5823(b), Dec. 23, 2022, 136 Stat. 3428, provided that:

“(1) IN GENERAL.—Not later than 2 years after the date on which final rules are promulgated under section 124(b)(2) of the Financial Stability Act of 2010 [12 U.S.C. 5334(b)(2)], as added by section 5811(a) of this title, the Securities and Exchange Commission shall issue rules to adopt the data standards required under paragraph (8) of section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)), as added by subsection (a) of this section.

“(2) SCALING OF REGULATORY REQUIREMENTS; MINIMIZING DISRUPTION.—In issuing the rules described in paragraph (1) that adopt the data standards described in that paragraph, the Securities and Exchange Commission—

“(A) may scale those data standards in order to reduce any unjustified burden on smaller regulated entities; and

“(B) shall seek to minimize disruptive changes to the persons affected by those rules.”

RULE OF CONSTRUCTION—NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117-263 not to be construed to require certain additional information to be collected

or disclosed, see section 5826 of Pub. L. 117-263, set out as a note under section 77g of this title.

§ 78o-4a. Commission Office of Municipal Securities

(a) In general

There shall be in the Commission an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) Director of the Office

The head of the Office of Municipal Securities shall be the Director, who shall report to the Chairman.

(c) Staffing

(1) In general

The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of this section.

(2) Requirement

The staff of the Office of Municipal Securities shall include individuals with knowledge of and expertise in municipal finance.

(Pub. L. 111-203, title IX, §979, July 21, 2010, 124 Stat. 1926.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Investor Protection and Securities Reform Act of 2010 and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Securities Exchange Act of 1934 which comprises this chapter.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of Title 12, Banks and Banking.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§ 78o-5. Government securities brokers and dealers

(a) Registration requirements; notice to regulatory agencies; manner of registration; exemption from registration requirements

(1)(A) It shall be unlawful for any government securities broker or government securities dealer (other than a registered broker or dealer or a financial institution) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer is registered in accordance with paragraph (2) of this subsection.