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Firms Withdraw as MAs Ahead of Final Rule.

WASHINGTON — Dozens of firms have withdrawn their registrations as municipal advisors under the new regulatory regime that takes full effect Tuesday, citing a myriad of reasons for avoiding participation in a new era of muni advising.

Beginning July 1, individuals and firms providing advice to state and local governments about the issuance of muni bonds or the investment of muni proceeds or escrows must begin registering under the Securities and Exchange Commission's permanent MA regime. More than 1,100 MAs temporarily registered with the commission, including major broker-dealer firms, single-proprietor advisory firms, lawyers, and other professionals. But by the eve of the rule's final effective date, many of those temporary registrants had decided not to remain registered as MAs.

"I haven't really been doing municipal advisory work, said Alexis Jackson, president of A.A. Jackson & Associates in Stone Mountain, Ga. Jackson, a lawyer and finance consultant, said she registered as an MA early in the regime because she had a client that wanted to do a tax-exempt deal. She said a subsequent change in the lending market led her to withdraw her registration in 2011, before the SEC's final rules were unveiled, because that one deal she registered for was scuttled.

Other market participants also indicated that they are no longer active in markets that would require them to be registered MAs. Peter Kvam, manager of investments and compliance at Healthcare Community Securities Corporation in New York, said his firm was one which decided to play it safe by registering rather than risk the consequences of practicing as an unregistered MA. Although the final rules have not been effective, MAs have already been required to register under a temporary regime and have been subject to a fiduciary duty and fair play rules.

"We took the conservative approach," Kvam said.

The company decided to withdraw earlier this year because it no longer carries 529 college savings plans, the only aspect of its business that it felt might trigger any obligation under the MA regime.

Other market participants said they simply decided not to get into the municipal advisory game after all.

"Not something I wanted to do right now," said Mallory Factor, a manager at Caelus Consulting, which solicits business for investment firms.

Nathan Howard, an attorney who works with municipal advisors, said the many withdrawals are the result of guidance that has made it more clear who is likely to be an MA in the view of the SEC staff. In recent months, the SEC has published two sets of interpretive guidance in the form of "frequently asked questions." That guidance explained that firms could be exempted from having to register as MAs under some circumstances, including if an issuer had retained its own independent MA, if the firms were responding to a legitimate request for proposals, or if they were offering certain types of advice permissible for their professions. Bond lawyers, for example, would not have to register as MAs as long as they do not cross the line from providing traditional legal services to providing

professional financial advice or holding themselves out to be financial experts.

The recent withdrawals are reflective of the broad registration exemptions granted by the SEC that are set to take effect on July 1, which will allow many firms to provide advice without triggering any fiduciary duty obligations,” Howard said. “The withdrawals are also resulting from the growing number of firms who have determined to cease their municipal advisory business either due to prospective costly regulation or an increase in acquisition activity.”

Some market observers continue to predict that large numbers of MAs, particularly smaller sole proprietorships, are likely to fold up shop rather than deal with the fees, tests, and other requirements imposed by the still-growing MA regulatory regime. Although the MA rule is ultimately just one small piece of the 2010 Dodd Frank Act and the SEC rule is now final, the Municipal Securities Rulemaking Board is still in the process of writing rules which will dictate the behavior of muni advisors. Of central concern to dealer and non-dealer MAs alike is the MSRB’s proposed Rule G-42 on the duties of non-solicitor municipal advisors, which is undergoing revision. While the law says that MAs have a fiduciary duty to put their municipality clients ahead of their own, it is up to the MSRB to create a regulatory framework that defines precisely what that means.

SEC Muni Chief John Cross has said previously that he expects the number of registered MAs under the final regime to be similar to that under the temporary one.

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