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SEC Eases, Clarifies Muni Adviser Registration Requirements for RIAs, BDs.

Investment advisers who provide state and local governments with advice on using municipal derivatives in their investment portfolios won't have to register with the Securities and Exchange Commission as muni advisers.

The SEC made a distinction between financial advisers who use security-based swaps as investments in muni pension plans, for instance, and those who advise municipalities on using derivatives to hedge risk in muni debt securities offerings in a Jan. 10 list of Frequently Asked Questions.

There are about 1,315 SEC-registered investment advisers who have muni clients.

The clarification on muni adviser registration prevents an unnecessary increase in regulation, according to the Investment Adviser Association.

"We are pleased these activities are not subjected to another duplicative and potentially conflicting regulatory regime," said IAA general counsel Karen Barr.

The FAQs also draw brighter lines regarding how much a broker-dealer can communicate with a municipality about bond offerings before becoming a muni adviser and being disqualified as the underwriter of the issue, according to Paul Maco, a partner at Bracewell & Giuliani.

"As a result, underwriters and bond lawyers don't have to worry about acting as a municipal adviser without registering as one as long as they follow the guidance they've been given," said Mr. Maco, former director of the SEC Office of Municipal Securities.

The Dodd-Frank financial reform law requires that muni advisers register with the SEC.

The final registration rule was to have gone into effect Monday. Instead, the SEC delayed compliance requirements until July 1.

The provision of Dodd-Frank designed to put SEC oversight on muni advisers addresses congressional concerns that lax regulation in muni markets led to substantial losses for state and local governments that used complex derivative products.

But market participants need more time to figure out how the 777-page rule, which was first proposed in December 2010 and finalized last September, will affect them, Mr. Maco said.

"It's a completely new group of registered people and activity," he said. "Between Friday afternoon [when the FAQ was published] and Monday is not enough time for entities to change their business model or get themselves into compliance."

Also last week, the Municipal Securities Rulemaking Board proposed a rule that would place a fiduciary duty on muni advisers and require them to disclose all conflicts of interest.

The compliance delay also was welcomed by the IAA, which said that some SEC-registered advisers have an affiliated bank that serves as a trustee to a fund in which municipalities can invest. If municipalities put proceeds from a bond sale into the fund, it could require the adviser to register as a muni adviser.

The extension gives the advisory firm more time to determine whether money from muni securities sales is flowing into the funds.

“It’s been proving to be a huge challenge,” Ms. Barr said.

By Mark Schoeff Jr.

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