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Munis Could be Caught Up in Revised CHOICE Act's Mandated SEC Reviews.

WASHINGTON – House Financial Services Committee Republicans have floated a revised version of their Financial CHOICE Act that would require the Securities and Exchange Commission to review municipal market and other self-regulatory organizations' inefficiencies as well as reform its enforcement process.

The memo dated Feb. 6 from committee Republicans includes many Dodd-Frank Act and other changes that may be proposed in the new version of the Financial CHOICE Act, which is expected to soon be introduced.

Committee chair Rep. Jeb Hensarling, R-Texas, introduced a version of the CHOICE Act during the last session that was approved by the committee but not taken up by the full House. Democrats have made clear they intend to fight Republican reforms to Dodd-Frank during the session.

Rep. Maxine Waters, the top Democrat on the committee, said Hensarling is trying to destroy protections that stop Wall Street from "ripping off hardworking Americans" and that the changes indicated in the memo show a new Financial CHOICE Act that "is even worse than the original." The committee's Republican staff would not return calls to verify and expand upon the memo.

One proposal in the memo is to have the SEC chair "provide a report within one year on eliminating duplication and inefficiencies amongst the various self-regulatory organizations." Sources said that language could mean exploring possible opportunities to roll back regulations and streamline rulemakings between the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority.

Executive orders from President Donald Trump have already directed the SEC to play a role in identifying how Dodd-Frank's implementation has not worked as well as how existing regulations could be streamlined.

Dealer groups have welcomed the attention to rulemaking and enforcement as they have consistently complained about the increasing costs and burdens of the many rules during the last few years that implemented Dodd-Frank provisions. The act subjected non-dealer municipal advisors to federal regulation for the first time and directed the MSRB to protect issuers as well as investors. The memo also proposes to prohibit the SEC from undertaking "rulemaking by enforcement."

One source said a large segment of the muni market saw the SEC's Municipalities Continuing Disclosure Cooperation initiative as rulemaking by enforcement because the commission had not directly spoken to issuers in recent years about their responsibilities under SEC Rule 15c2-12 on disclosure. MCDC promised underwriters and issuers that they would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely stated in offering documents that they were in compliance with their continuing disclosure agreements.

Another proposal would direct the SEC to establish a "Wells Committee 2.0 to reevaluate its enforcement program." Sources said the "Wells Committee 2.0" likely refers to a requirement to conduct similar analyses to what the SEC's Wells Committee did in the 1970s. That committee reviewed commission enforcement activity and recommended, among other things, that the SEC implement the practice of giving an individual or firm that may face a commission civil action an opportunity to explain why the action should not be brought. The notice given to the potential parties in the actions is called a Wells Notice.

There were several muni-related portions of the previously introduced CHOICE Act that are not mentioned in the memo, that sources said may still be in the bill when it is reintroduced.

One would move the SEC's Office of Municipal Securities back into the commission's trading and markets division, where it was before Dodd-Frank required it to be independent and report directly to the SEC chairman. Another would divert the funding the MSRB regularly receives from SEC and FINRA enforcement actions over muni rule violations to the Treasury for deficit reduction. Of the MSRB's roughly $35.4 million in revenue in its fiscal year 2016, $1.2 million came from fines for muni rule violations.

The original CHOICE Act also would have allowed the SEC to triple monetary fines in administrative and civil actions where penalties are tied to illegal profits as well as in enforcement cases dealing with repeat violators of laws and rules.

The Bond Buyer

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