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Bill Would Exempt Banks From MA Registration, Oversight, Fiduciary Duty.

Sen. Mark Warner, D-Va., has introduced legislation that would give commercial banks a blanket exemption from municipal advisor registration and oversight under the Dodd-Frank Act.

Warner's bill, introduced last week, is identical to a bill sponsored by Sen. Pat Toomey, R-Pa., that failed to advance beyond the committee level last year. The Warner bill would allow banks to avoid having to register as MAs with the Securities and Exchange Commission and become subject to Municipal Securities Rulemaking Board rules and Dodd-Frank's federal fiduciary standard to put clients' best interest first. Toomey is a cosponsor of Warner's legislation.

The bill represents a different approach to tackling the MA definition than the path presented in a bill introduced in the House in February by Rep. Steve Stivers, R.-Ohio. The Stivers bill offers an exemption for a wider range of market participants like appointed members of governmental boards and swap dealers in addition to bankers and underwriters, but would not subject those entities to a fiduciary duty to the issuer if they are "exclusively engaged" as a financial advisor. It is a copy of a bill sponsored by then-Rep. Robert Dold, R-Ill., that died in the Senate after winning house approval last year.

Michael Decker, co-head of municipal securities at the Securities Industry and Financial Markets Association, supports the Stivers bill but said the Warner bill is an important statement.

"It demonstrates the extent of opposition to the SEC's proposed rule," he said.

Susan Collett, Bond Dealers of America's senior vice president of government relations, agreed that the introduction of Warner's bill is an indication of anxiety over the SEC's taking time to finalize the MA definition. Collett said her group views Stivers' bill as a more comprehensive solution, while the Warner bill is more of an overlay to the bigger issue.

"The Stivers bill tries to tackle the big picture," she said.

American Bankers Association president and chief executive officer Frank Keating wrote to Warner and Toomey April 12 to express the ABA's support for the bill.

"ABA believes that Congress did not intend for banks and savings institutions that are already supervised and examined to be regulated as municipal advisors," Keating wrote. "ABA strongly believes a complete exemption is required because these institutions provide such a broad array of traditional banking products and services to municipalities that any limited exemption will necessarily cover activities that should not be captured."

Steve Apfelbacher, a financial advisor and president at Ehlers Financial Advisors, said the legislation is an attempt by bankers to "soften up" Dodd-Frank. "I understand from their perspective why they

want to do that, but I don’t think that meets the intent of Dodd-Frank,” Apfelbacher said.

Larry Kidwell, president at Kidwell and Company. Inc., said financial institutions should not be allowed to avoid the fiduciary duty if they are providing advice about loans or securities.

“That firm is providing municipal advisory services, period,” Kidwell said.

Marcus Stanley, policy director at Americans for Financial Reform, said giving banks a blanket exemption is “totally inappropriate.” Stanley said the purpose of the Dodd-Frank regulations is to impose a fiduciary duty on financial advisors, forcing them to put the interests of the issuer before their own. While banks might be regulated for systemic risk, there is nothing duplicative about the Dodd-Frank MA regulation and the ABA argument does not fly, Stanley said.

“It’s a non-sequitur,” he added.

Both Stanley’s group, and independent advisors, have criticized the Stivers bill for potentially allowing big banks and swap dealers to avoid regulation.

Warner’s bill is currently awaiting action by the Senate Committee on Banking, Housing, and Urban Affairs.

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