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Reps. Stivers, Moore, Lobby SEC Chair White on MA Definition.

Reps. Gwen Moore, D-Wis., and Steve Stivers, R-Ohio, have sent a letter to new Securities and Exchange Commission chairman Mary Jo White urging her to make sure that the SEC's final definition of municipal advisor reflects their bill, which is pending before the House Financial Services Committee.

"We were dismayed in December 2010 when the SEC released the proposed definition of municipal advisor," Stivers and Moore wrote. The pair are sponsors of H.R. 797, which would clarify Section 975 of the Dodd-Frank Act and define MAs as those engaged with issuers to provide financial advice for compensation. The bill contains exceptions for dealers seeking to be underwriters and those providing related advice, as well as bankers, swap dealers and governmental board members.

"The proposed rule went far beyond the scope of Section 975 by encompassing entities and activities that Congress never intended to fall under the definition of municipal advisor," they told White in their letter.

The legislation takes the same tack as a bill sponsored by former Rep. Bob Dold, R-Ill., that passed the House during the last Congress but failed to move forward in the Senate.

The Stivers/Moore bill enjoys the support of dealer groups but has been criticized by non-dealer financial advisors and others who fear it creates a way for banks to circumvent Dodd-Frank.

"We've been actively engaged with Reps. Stivers and Moore since the beginning of this Congress on the issue and we appreciate their writing to the commission," said SIFMA spokesman Andrew DeSouza.

But a market participant who asked not to be named said the letter is dishonest in claiming that Congress never intended for certain participants to fall under the definition. "They're trying to recreate congressional intent after-the-fact," he said. "They're trying to create an after-the-fact record."

The Stivers/Moore letter references the "extensive stakeholder input" that went into the legislation, but the market participant said not a single member of the National Association of Independent Public Finance Advisors was formally included in the process. Nathan Howard, an attorney at Kodner, Watkins & Kloecker LC, who works with non-dealer muni advisors, said there is no record of congressional intent and the bill would create an end-run around the SEC.

"HR 797 prohibits the commission from effectively protecting the interests of state and local government issuers by preventing the commission from regulating entities if they do not receive compensation specifically for their municipal advisory activities, which is contrary to the commission's longstanding philosophy, that can be put simply as, if it looks like a duck, walks like a duck and sounds like a duck, it's a duck," Howard said.

An SEC spokesman declined to comment on the letter, saying the commission will respond to Stivers and Moore. However, John Cross, the SEC's top muni official has said publicly that he would prefer that the SEC be allowed to complete its rulemaking process on MAs before Congress enacts legislation that might possibly force it to go back to the drawing board.

Market participants are clamoring for the SEC to finalize the MA definition. The Municipal Securities Rulemaking Board also has been waiting for the definition, which has held up its efforts to author new rules and rule changes for MAs.

Originally expected to come out in 2011, then 2012, then the first quarter of 2013, the final definition is still waiting for approval by the SEC commissioners. "Three years after the enactment of Dodd-Frank, it is vitally important that Section 975 be implemented so that state and local governments gain the protections of the regulatory umbrella Congress intended," Moore and Stivers wrote to White.

White is slated to appear before the House Financial Services Committee on Thursday at an oversight hearing on the SEC's budget, operations and agenda.

Kyle Glazer

The Bond Buyer

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