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Lawmakers Give SEC Until Fall for MA Definition.

Pressure is mounting for the Securities and Exchange Commission to complete its rulemaking defining municipal advisors, with congressional aides saying a House panel will likely hold a hearing on potentially preemptive legislation after the August recess.

A congressional aide said that while lawmakers are content to give the SEC a little more time while other high-priority issues take center stage, the House may preempt the commission if the MA definition does not drop before the start of college football season. SEC chairman Mary Jo White and the commission's muni chief John Cross have both publicly voiced the preference that Congress not pass laws related to current SEC rulemaking until after the rules are finalized.

The looming stick is 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.

Cross said such legislation could force the SEC back to square one to begin the rulemaking process anew.

The bill, sponsored by Reps. Steve Stivers, R-Ohio, and Gwen Moore, D-Wisc., 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.

An aide familiar with the scheduling of the House Financial Services Committee, which has jurisdiction over securities issues, said housing reform legislation is the top priority right now but that committee chairman Jeb Hensarling, R-Texas, would probably schedule the Stivers/Moore bill in September.

"There is some pressure to move on this by the fall," the aide said.

Stivers and Moore sent the commission a letter in May urging that the SEC's final registration rule for MAs resemble H.R. 797 in substance. In it, they expressed dismay at the commission's initial 2010 stab at a definition, saying the proposal went beyond the scope of what lawmakers who enacted the Dodd-Frank Act intended.

The pair received a non-committal response from White but subsequent public comments from Cross indicate that the SEC will address some of their concerns in the final registration rule. There has not been further official communication on the matter since then.

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, swap advisors and others to circumvent Dodd-Frank. Some market participants have questioned the bill's premise that the Dodd-Frank Act was never intended to be so broad, and accused the lawmakers of creating legislative intent "after the fact."

An aide said the MA definition remains a very high priority for Stivers, who wants to maintain pressure on the SEC to release the rule. Many municipal market professionals remain unsure if they will fall into the category of MA, so further muni rulemaking is largely predicated on the definition.

The Municipal Securities Rulemaking Board has been waiting for the definition, which has held up its efforts to author new rules and rule changes for MAs. MSRB executive director Lynnette Kelly has said the board is ready to spring into action as soon as the SEC releases its final rule.

Cross has said the definition will be released in late summer, but it was originally expected to come out in 2011, then 2012, then the first quarter of 2013.

The House recesses on Aug. 2 and returns Sept. 9.

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