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Asset Managers Want Compliance Delay or Exemption from MA Rule.

WASHINGTON — Two groups are asking the Securities and Exchange Commission to delay the municipal advisor rule compliance deadline until July 1 for asset managers who manage swaps or securities-based swaps in the portfolios of their municipal clients.

The Securities Industry and Financial Markets Association's Asset Management Group and the Investment Advisor Association made the request, and also asked for an exemption from the rule, in a Jan. 2 letter to SEC muni chief John Cross. They argued that traditional asset managers only recently found out that they could be included in the new municipal advisor regulatory regime, which is slated to become effective on Jan. 13. They said asset managers will need until July 1 — the date when all MAs will need to be registered under the final rules — to prepare for compliance.

The problem arose, SIFMA said, because these portfolio managers believed they were exempt from the final MA rule until they studied it and determined that including a single swap or security-based swap within the portfolios of their municipal entity clients "could trigger MA registration requirements.

The final rule includes an exemption for swap advisors registered with the Commodity Futures Trading Commission, but those advisors will still have to register with the SEC as MAs if their portfolios include one or more securities-based swaps, said Matthew Nevins, managing director and associate general counsel for SIFMA's asset management group. Asset managers not registered with the CFTC had believed they would be exempt because securities-based swaps would make up a fraction of their portfolios, he added.

"It took us by surprise that this rule could pick up asset managers," Nevins said in an interview.

While SIFMA hopes the SEC grants this "time-limited" relief to asset managers so they can prepare for compliance, the group would like an interpretation of the MA rule that keeps them out of the regime entirely.

"We believe that the rule is properly interpreted to exclude registered investment advisers to the extent they engage in traditional asset management, including managing portfolios of municipal entity clients that may include swaps or security-based swaps," SIFMA said in the letter. "This interpretation would prevent duplicate regulation of the same activity by the SEC under the [Investment] Advisers Act and by the [Municipal Securities Rulemaking Board] under its rules (as well as the SEC under the Exchange Act) and even potential triplicate regulation for some investment advisers that are also commodity trading advisors registered with the CFTC," the groups said.

Nevins added that SIFMA is also hoping for some relief on the issue of pooled investment vehicles, which can include muni bond proceeds. Nevins said asset managers are having tremendous difficulty determining if these pools contain such proceeds and therefore require the manager to be an MA. The SEC should either grandfather all existing investment vehicles and grant them an exemption, or

should allow a “good faith effort” to suffice in determining if they include municipal bond proceeds or not.

The SEC is expected to release further MA rule guidance any day. Nevins said he is not sure whether it will address the issues raised in the letter, but said he is confident the SEC is understanding of SIFMA’s concerns.

BY KYLE GLAZIER

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