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Rep. Stivers Pushes SEC to Limit MCDC, Warns of Possible Legislation.

WASHINGTON — A Republican congressman is pushing the Securities and Exchange Commission to limit the scope of its disclosure violations self-reporting program to the last two years, warning that if it does not he and other lawmakers may seek a legislative solution.

Rep. Steve Stivers, R-Ohio, fired the shot across the SEC's bow during House lawmakers' discussion of H.R. 5016, an appropriations bill for the Treasury on Wednesday.

Stivers had prepared an amendment to bill that would not fund the SEC's MCDC's efforts for more than two years. He did not formally offer it, but discussed his concerns about the program on the House floor with Rep. Ander Crenshaw, R-Fla., chair of the Appropriations Committee's financial services panel.

The Municipalities Continuing Cooperation Disclosure initiative allows issuers and underwriters to get favorable settlement terms if they voluntarily report, by the end of Sept. 9, any time in the last five years they offered bonds without disclosing failures to meet their continuing disclosure agreements they set up under the SEC's Rule 15c2-12. But Stivers' amendment would have prevented MCDC settlements for deals taking place before March 19, 2012.

That date coincides with a risk alert issued by the SEC's office of compliance inspections and examinations that detailed the commission's view on an underwriter's obligations under 15c2-12. Though that part of the rule was adopted in 1994, the SEC only began to take enforcement actions in this area since the risk alert.

Market groups including the Government Finance Officers Association, the Securities Industry and Financial Markets Association, and Bond Dealers of America have lobbied the SEC to extend the deadline for MCDC participation and restrict its scope to more recent deals, but the commission has refused to budge. House rules prevent legislating in appropriations bills, but Stivers' amendment would have cut off MCDC funding for violations prior to March 2012.

The House has only 10 working days before the end of the MCDC period because the chamber is not scheduled for legislative business in August. But Stivers told colleagues that he is interested in working with them to make changes to the program if the SEC continues to stick to its guns.

"The states and localities that the SEC is trying to protect do not support this program, and feel it's very punitive," Stivers told Crenshaw, noting that the Government Finance Officers Association supported his amendment. Stivers thanked Crenshaw for being willing to work with him and the House Financial Services Committee on a solution "should the SEC not choose to curtail this program on their own."

"We want to make sure it's fair and equitable to our states and local municipalities," Stivers said.

Crenshaw said making sure a large number of bond deals is in compliance is "a huge undertaking,"

and told Stivers he looked forward to helping him “find some solutions.”

Michael Decker, a managing director and co-head of municipal securities at SIFMA, applauded the action.

“We thank Rep. Stivers for his attention to the issues raised by the MCDC Initiative,” Decker said. “We, too, believe it would be appropriate for the SEC to focus the program on transactions that were executed after the SEC’s Office of Compliance Inspections and Examinations issued their notice in March 2012 focusing the municipal market’s attention on compliance issues covered by the MCDC.”

There has been only one MCDC settlement so far. The SEC last week charged Kings Canyon Joint Unified School District in California with misleading bond investors in a 2010 deal. Some market participants have pointed out that Kings Canyon was already under investigation when it consented to participate in the MCDC, so it did not actually self-report.

Bond attorneys have also expressed frustration that the settlement does not specify what disclosure failures the SEC focused on. Muni groups have repeatedly sought SEC guidance on what threshold of failure warrants an MCDC confession, but the commission has been silent on that front.

Stivers has shown an interest in muni market issues before, previously sponsoring legislation and lobbying the SEC to narrowly tailor municipal advisor regulations.

The Bond Buyer
BY KYLE GLAZIER
JUL 17, 2014 4:01pm ET