

InvestmentNews

Leftover funding will keep SEC at 100% if government closes

Business as usual expected for weeks until partial shutdown begins

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The Securities and Exchange Commission will continue operating at 100% — using carryover funding from fiscal year 2013 — even if the federal government partially shuts down tonight at midnight.

If lawmakers cannot reach an agreement today on a budget, many government agencies will start to curtail their functions, but the SEC will be able to maintain business as usual, according to spokesman John Nester. The agency's fiscal 2013 budget totaled \$1.321 billion.

The SEC is different from many other agencies because it can use its budget funding until it is spent. It doesn't have to spend the entire amount in one fiscal year.

“It is not uncommon for us to have carryover balances at the end of a fiscal year, and we have determined that our carryover balances are sufficient to allow us to remain open for a few weeks if there is a lapse of appropriations,” Mr. Nester said, referring to a government shutdown.

The House and Senate are squabbling over a so-called continuing resolution that would maintain current budget funding until Congress could work out an agreement on the fiscal year 2014 spending levels.

The Republican-led House has passed a continuing resolution that also would delay the health care reform law for a year and end a tax on medical devices. The Democratic-controlled Senate has approved a funding measure without amendments.

The federal government fiscal year ends at midnight tonight.

If the shutdown goes into effect and lasts long enough for the SEC to run out of money, the agency will begin implementing parts of the shutdown plan that the Office of Management and Budget issued last Friday.

The OMB plan calls for the SEC to operate with a skeleton staff of 252 of its 4,149 employees.

The OMB said the SEC could continue to handle emergency enforcement matters and monitor its system for receiving tips and complaints. It also would monitor market activity and keep its company and individual filing system running, among other activities.

The agency would have to halt litigation and investigations, and suspend investment adviser exams, among other non-emergency reviews. It would not conduct non-emergency rule making, issue no-action letters or consider exemptive relief. It also would not approve applications for new financial products or conduct routine oversight of the Financial Industry Regulatory Authority Inc. or other self-regulatory organizations.

The SEC finances its operations through registration and other fees it charges. But the level of money it can spend each fiscal year is set by Congress.

“They have a little more flexibility [than other government agencies] — not legally but operationally,” said Mark Calabria, director of financial services regulation at the Cato Institute, a libertarian think tank. “I don't expect the SEC to shut its doors. I expect some staff to stay at home. Certain functions of the agency will lapse.”

Financial firms and other market participants should take precautions, with the budget in flux, according to Scott Kimpel, a partner at Hunton & Williams LLP and former counsel to former SEC member Troy Paredes.

“If you're doing something in the next couple weeks that would require the SEC's approval or exemption, you should call the SEC in the next day or two to find out if anyone will be there,” Mr. Kimpel said.

If the SEC does have to partially shut down, investment adviser exams are among its expendable duties, Mr. Calabria said.

“At the end of the day, if the SEC didn't do a week's worth of investment adviser exams, you wouldn't notice it,” he said.