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Banks brace for more tough regulation from Obama

South Florida Business Journal by Brian Bandell, Senior Reporter



Attorney Rick Zelman, of Sacher, Zelman, Hartman, Paul, Beiley & Sacher, P.A. in Miami.

President Barack Obama's re-election, coupled with the Democrats retaining control of the U.S. Senate, means banks and the financial services industry can expect the administration's regulatory crackdown to continue.

Republican presidential candidate Mitt Romney vowed to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act, but that likely will not happen in the next four years. Instead, the regulatory agencies will write the new rules governing banks and financial services under the vision of Obama.

The administration's focus on tax disclosure for foreign accounts will continue as well.

"I hope regulation doesn't escalate to yet another level to where it hinders the business of banking," said Patricio Perez, a partner and southeast leader of financial institutions accounting for McGladrey in Miami. "It's difficult to come up with different sources of revenue. The margins are contracting. People say the economy is turning around, and that may be true, but it hasn't reached a full recovery yet. If the Obama administration puts forth additional regulations, it would be catastrophic for the industry."

Perez is worried that community banks would be required to conduct enterprise risk management, which is a process where banks see how they would perform in a bad economy or with big swings in interest rates. Large banks underwent a similar process as part of a so-called stress test.

The increased cost of regulation is already hampering many small banks, said Perez, who works with more than 40 banks in Florida. They must hire additional staff to pay for training, but there are not new sources of revenue to make up for that, he said.

Obama will help set the direction of the new Consumer Financial Protection Bureau as the

consumer laws of all the bank agencies fall under its roof, said Lewis Cohen, an attorney in the banking and finance division at GrayRobinson in Miami. That will create uniformity in many laws regulating account disclosures, consumer privacy, fair credit reporting, truth in lending, and other areas, he said. The CFPB is still writing many of those rules.

Now, Elizabeth Warren, who helped form the idea for the CFPB, is a senator-elect from Massachusetts.

"The new CFPB, the Number One target of Romney and the Republicans and the banking lobby in general, is clearly here to stay and will likely be stronger and more passionate than ever with Warren's win," said Miami-based bank analyst and economist Kenneth H. Thomas. "Bankers are even more concerned as the general anti-banking and anti-Wall Street climate of the last several years is likely to continue and be even stronger with a new and emboldened pro-consumer movement."

Thomas expects regulatory compliance examiners to continue putting pressure on banks, and maybe even get tougher.

These new regulations will lead to expenses for training and more personnel at banks, with community banks being more impacted financially than national banks, which can more easily absorb those expenses, Cohen said.

"Banks have had to adjust to significant changes in the law before and I am confident they will be able to do it again," Cohen said.

Perez said the added regulatory costs would compel many smaller community banks to either merge or raise enough capital to grow to a size where they have better economies of scale. Cohen said community banks should be able to grow larger because there's still a consumer backlash against large banks.

One big issue before Obama is whether the U.S. thrusts the capital requirements of the international Basel III regulation on community banks, in addition to large banks. That would require them to boost their capital ratios to remain "well capitalized." U.S. Comptroller of the Currency Tom Curry has voiced his support for this, although Obama has not made a final decision.

Perez said it would be difficult for community banks to raise enough capital to comply with Basel III because investors do not believe the industry will generate the level of returns it did a decade ago.

Rick Zelman, a financial services attorney with Miami-based law firm of **Sacher, Zelman, Hartman, Paul, Beiley & Sacher, P.A.**, said he expects the Obama administration's aggressive enforcement of banking laws to continue, including for international banking. Under the Foreign Account Tax Compliance Act (FATCA), the U.S. has required foreign banks to turn over data on the accounts of U.S. citizens to the Internal Revenue Service. To reciprocate, the IRS has proposed a rule where banks in the U.S. would turn over data on interest earned by foreign depositors to their home countries. The Florida International Bankers Association opposes the latter rule, saying it would make many foreign depositors take their money out of Florida banks in favor of countries with greater privacy.

“This has been something the Obama administration has been pushing very hard,” Zelman said.
“That will be a continued issue for international banks that want to do business in the U.S.”

On the other hand, Zelman expects Obama to strongly support to the U.S. Small Business Administration, which utilized several incentivized loan programs during Obama’s first term.

One bright spot for bankers, said Thomas, is that Obama's likely retention of Federal Reserve Chairman Ben Bernanke means his policies to keep interest rates low should continue as far as into 2015. This should keep banks' cost of funds low and it will help the stock market, he said.

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