InsideCounsel
BUSINESS INSIGHTS FOR LAW DEPARTMENT LEADERS

Regulatory: The Consumer Financial Protection Bureau

Meet the new boss; not the same as the old boss.

By Martin Bishop
May 4, 2011

Last July, Congress passed and President Barak Obama signed into law the omnibus Dodd-Frank Wall Street Reform and Consumer Protection Act, ushering in a new era of financial regulation. With fourteen separate titles spread out over 2,319 pages, the Dodd-Frank Act is truly monumental. The Act requires at least 243 new rule makings by 11 different federal agencies and a variety of extensive new disclosures and reporting requirements. Additionally, the Act calls for 60 new studies and 90 new reports. Most expect that Dodd-Frank will result in more than a mind-blowing 5,000 pages of new regulations directed at the entire financial services industry.

Are banks and other consumer financial services companies worried about all of this new regulation? You better believe it. A recent study conducted by the Illinois Bankers Association found that almost 97 percent of the respondents believe that implementing the Act will significantly increase operating expenses. Eighty percent of the respondents believe that the Dodd-Frank Act will require their institutions to outsource regulatory compliance functions, compounding anticipated increases in operating expenses.

One of the most significant changes that the Dodd-Frank Act brings about is Title X's creation of a shiny new federal regulator: the Consumer Financial Protection Bureau. Once it is fully up and running later this year, the bureau will have expansive and near plenary authority to adopt and enforce regulations over wide swaths of the consumer financial services industry, contributing substantially to the new regulatory landscape under the Dodd-Frank Act.

While we do not yet know a lot about the new and rapidly developing bureau, one thing is clear: This regulator is *not* the same as the pre-Dodd-Frank era financial services regulators. To get a feel for it, one need look no further than the bureau's website. Click on the bureau's badge (yes, a badge!) and watch the video. Like Commissioner Gordon shining a bat light over Gotham City, the bureau views itself as having sweeping lights of justice focused on the evils of the consumer financial services industry.

The bureau's view of itself is not unjustified. This agency has real strength in its substantial rule making and enforcement powers. The bureau was designed to be free of interference from other parts of the federal government that may not favor its direction. Indeed, the Act itself defines the bureau as independent, and devotes an entire section to the "Autonomy of the Bureau."

The bureau will ultimately be headed by a single, all-powerful director who will be appointed by the President for a five-year term. No one is quite sure who the first director will be but, last September, President Obama appointed Professor Elizabeth Warren to oversee the start up of the bureau. Warren has long been a front runner to be the bureau's first director, though many believe that the Senate will not approve her.

Perhaps most important to the bureau's autonomy is that its funding is set by statute. The Act provides that the bureau will get all of its funding from the Federal Reserve Board. The board is required to transfer to the bureau the amount of money reasonably necessary to carry out the functions of the bureau. The amount of the transfers cannot exceed 10 percent of the total operating expenses of the federal reserve system for 2011, 11 percent in 2012, and 12 percent in 2013 and each year after. The Act specifically provides that the board's transfer of funds to the bureau is not subject to review by the Appropriations Committees of the House or the Senate.

In an effort to lessen the impact of the bureau's significant powers, Congress slipped several new Dodd-Frank amendments into the April 15, 2011 bill signed by President Obama to resolve the federal budget impasse. Specifically, the Act now requires the bureau to have an annual independent audit of its operations and budget, and an annual Government Accountability Office (GAO) audit of the bureau's financial statements. In addition, the GAO is required to conduct an annual study of financial services regulations and the bureau's activities. While the intent of these new requirements may have been to weaken the bureau or at least to make it more transparent, practically speaking, they will have very little effect. The social media savvy bureau – with its blog, Facebook page, and Twitter account – has already set itself up to be the most transparent agency in history.

With this as our backdrop, over the coming weeks we'll take a look at who and what is covered by Title X of the Dodd-Frank Act, and explore some of the bureau's specific powers.

This column is the first in a series of articles on the coming of the Consumer Financial Protection Bureau and the direction it is likely to take in the regulation of consumer financial products and services.

Martin J. Bishop is a partner and vice chair of the Consumer Financial Services Litigation Practice at Foley & Lardner LLP. He can be reached at mbishop@foley.com.