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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Regulators To Buckle Down On Dodd-Frank After Obama Win

By **Evan Weinberger**

Law360, New York (November 07, 2012, 7:34 PM ET) -- President Barack Obama's re-election, coupled with victories for key U.S. Senate Democrats on Tuesday, will likely spur financial regulators to take a tougher stance with banks that have long been fighting their efforts to implement the administration's Dodd-Frank Act reforms, experts say.

The financial services industry, and in particular employees at Wall Street banks, donated heavily to Republican candidates including former Massachusetts Gov. Mitt Romney and outgoing Massachusetts Sen. Scott Brown during the 2012 election cycle in hopes of getting a more industry-friendly view in power in Washington.

With Romney losing to Obama and Brown defeated in his battle with Democrat Elizabeth Warren — the driving force behind the creation of the Consumer Financial Protection Bureau — as well as several other vocal critics of banks winning their races, those hopes are dashed.

“The result is that anyone [who] was banking on any significant changes in the opposite direction of where these agencies were headed will need to evolve and reassess their approach,” said Venable LLP of counsel Jonathan Pompan.

While the president was involved in the fierce campaign against his Republican challenger, regulators may have held back on bringing out some of their more hotly debated rules and taken a more cautious approach with enforcement actions, Pompan said. Although regulators have been working furiously on Dodd-Frank Act rules, many of the most complex — and most heavily lobbied — rules are still yet to be completed.

Those include the 2010 law's ban on proprietary trading, named the Volcker rule after former Federal Reserve Chairman Paul Volcker; the Consumer Financial Protection Bureau's qualified mortgage rule, which would require lenders to determine whether a borrower is able to repay a loan; and the implementing rules for increased capital standards required by the Basel III international banking accords.

Now that there is a certain amount of stability and continuity, regulators' caution is likely to go by the wayside, said Alan Avery, a partner with Latham & Watkins LLP.

“The agencies now have more certainty than they had before the election, and I think they are in a better position to start finalizing those rules,” he said.

Regulatory agencies have also been facing heat from Democrats in Congress about the pace of rulemaking. This has been particularly true in the case of the Volcker rule, which has become one of Dodd-Frank's signature provisions. The deadline for a final rule passed in July, and regulators have said they hope to have a final version wrapped up by the end of the year.

But the authors of the provision, Sens. Carl Levin, D-Mich., and Jeff Merkley, D-Ore., have been pushing the Federal Reserve, the Federal Deposit Insurance Corp., the Office of the Comptroller of the Currency, the U.S. Securities and Exchange Commission, and the U.S. Commodity Futures Trading Commission to speed up the rulemaking process. With an increase in the number of Democrats sitting in the next Senate, Levin and Merkley may be emboldened to apply more pressure.

Now with the threat of a change in administration gone, regulators might be more willing to bring forward a final version of the rule more quickly than if Romney had won, said Derrick Cephas, a partner with Weil Gotshal & Manges LLP. The same holds true for other outstanding rules, he said.

“I think those kinds of questions are now off the table, and people, I think, can get back to doing their jobs,” he said.

And that might actually be a positive outcome for banks, Avery said.

“Hopefully ... for the banking industry, [there will be] some certainty around the rules and the process that can be the basis on which the banks can move ahead toward implementation and conformance,” he said.

Obama's win may also require banks to at least somewhat alter their relationships with the administration and the regulators. Already, several industry groups have put out congratulatory messages to the president that have emphasized cooperation.

“[The Mortgage Bankers Association] supports efforts that protect consumers without cutting off the supply of mortgage credit through burdensome regulation and exposure to litigation. We will work with the Obama administration to ensure that policymakers understand the nature of the tradeoffs involved in various regulatory and legislative efforts,” the lobbying group said in a Wednesday statement.

But regulators may now feel less compelled to bow to industry wishes than they have in the past, said Jeffrey Taft, a partner with Mayer Brown LLP.

“The certainty that the election has brought now gives the agencies a freer hand,” he said.

--Editing by Elizabeth Bowen and Lindsay Naylor.