Debbie Sousa

From: Kevin M. Cuff [kmcuff@massmba.com]
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To: Deb Sousa
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ıst FYI ~ below is a *Boston Globe* article which despite the "boom to bust" reporting, I find to be a fairly upbeat description of the verall financial services market. The second piece is a write up on what passed the House Financial Services Committee last weel nd a part of which is attached to tomorrow's Agenda. I think this new Agency is going to garner a lot of attention over the next everal months.

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The Boston Glob

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Cracked by crisis, a pillar holds up

Sector beginning to rebuild cautiously as fears of instability linger

By Todd Wallack, Globe Staff | October 28, 2009

Over the past decade, Kevin Cuff has watched the region's mortgage industry go from boom to bust.

A few years ago, thousands of people rushed into the housing market - selling mortgages, appraising homes, brokering deals - with hopes of cashing in on soaring home prices. At the peak in 2005, about 3,200 people jammed the mortgage banking industry' biggest regional conference. But at the latest annual gathering a few weeks ago in Providence, it was a more sedate affair. Just 900 showed up - similar to attendance in 1999 before the real estate market took off.

"We're back to square one,'' said Cuff, executive director of the Massachusetts Mortgage Bankers Association.

That's a common feeling in the state's financial services sector, long considered a pillar of the Massachusetts economy. The stock market is lower than it was a decade ago. Many banks have become hesitant about lending, particularly for large construction projects. Fat bonuses have gone on a diet. And financial jobs are harder to find.

The industry - which includes mutual funds, money managers, banks, insurers, and mortgage brokers - had 206,800 employees in September, about 13,500 fewer jobs or 6 percent less than the year before, according to state labor figures. And research firm Moody's Economy.com estimates employment could fall an additional 2 percent or more by next summer.

In addition, many industry executives and economists say a wave of mergers could sweep the sector, while Congress considers rules to reshape the industry.

"We're in an unusually unstable period,'' said Eric S. Rosengren, president of the Federal Reserve Bank of Boston. "It's too soon t know how this shakeout is going to occur.''

Many financial executives, however, say they are seeing glimmers of hope. The S&P 500 has surged 59 percent since hitting 12-year-low in March, and investors are starting to pour money into local mutual fund companies. Housing prices have started to rise. And some insurers are selling more policies. That in turn has led some companies to start slowly expanding after months of cost-cutting.

Local mutual fund executives are particularly optimistic because the rising stock market has boosted investment assets and encouraged investors to start buying funds again. Investors have contributed more than they have withdrawn for five straight months, according to the Investment Company Institute, an industry group. Most investment companies earn fees for every $1 invested in their funds, so the higher the asset levels, the higher their revenue and profits.

But here’s why companies remain cautious: Investors, who withdrew nearly $234 billion from stock mutual funds last year, have added only $15 billion to funds through the first nine months of this year, according to the Investment Company Institute.

At MFS Investment Management, for example, assets under management climbed to $175 billion at the end of September from $124 billion at the end of March. But that’s still lower than its peak of $200 billion at the end of 2007. The mutual fund company, which has 1,500 employees in Boston and Quincy, shed 5 percent of its staff after last fall’s market crash but plans to add only about 50 jobs over the next year, most of them overseas.

“We have been through quite a volatile period,’’ MFS chief executive Robert Manning said. “The markets went down and they have rebounded just as fast, but there has certainly been a lot of damage.’’

At Fidelity Investments, assets under administration have jumped 8 percent to $2.8 trillion in the first half of the year but that doesn’t make up for the 23 percent drop in 2008. Fidelity president Rodger Lawson recently said the financial services giant, which cut 3,000 jobs over the past year, doesn’t plan any further major cuts but is not going on a hiring tear either.

“We’re trying to stay lean and charming,’’ Lawson said in an August interview. “You need to be very efficient in this marketplace.’’

Many industry executives say a wave of consolidation could shake the mutual fund industry as firms buy smaller or weaker competitors or sell units that don’t fit their core business. One example: Bank of America Corp. is selling the bulk of its Columbia Management mutual fund unit, which is based in Boston, to Ameriprise Financial Inc. for as much as $1.2 billion.

“We’re a maturing industry,’’ said John Hailer, who runs the North American unit of Natixis Global Asset Management, a company that has about 1,100 employees in Boston. ’’You’re going to see some consolidation.’’

On the banking front, local institutions have reported lower profits, higher loan losses, and increased government insurance fees. Yet most community banks remain in the black, and a few are trying to grow.

Independent Bank Corp., the parent of Rockland Trust Co., has grown by expanding its own business and by acquiring other banks. It recently bought Benjamin Franklin Bancorp. and Slade’s Ferry Bancorp.

“We feel like we have a unique opportunity to take advantage of the turmoil in the market,’’ said chief executive Christopher Oddleifson.

Still, some of the state’s biggest banks have been hit hard by troubled investments such as subprime mortgages and commercial loans.

Bank of America, the biggest in Massachusetts, posted a $1 billion loss in the third quarter and received $45 billion in loans from the US government. The bank, which is shedding about 10 percent of its worldwide workforce, has already closed 11 of its 297 branches in Massachusetts.

Citizens Financial Group, the region’s second-largest bank, reported a $929 million loss last year and disclosed plans to cut 2,000 jobs nationwide. But the bank has continued to open branches in Massachusetts, including one in a Dunkin’ Donuts this month, an to hire in key areas, including 40 employees in its wealth management unit in Boston.

For two of the state’s biggest insurance companies - John Hancock Financial in Boston and Sun Life Financial in Wellesley - they have kept their employment steady, even though their profits have been squeezed by investment losses and the need to increase reserves. Meanwhile, MassMutual Financial Group, of Springfield, eliminated 500 jobs after big investment losses last year, although it is beginning to hire again.

Liberty Mutual Insurance Co. expanded its operations after the state deregulated auto insurance allowing companies to set their own rates in 2008. The Boston insurer has nearly 4,091 employees in Massachusetts, up 15 percent from the end of 2007, and plans to add 75 more in Springfield by mid-2010.

No part of the financial sector has been hit as hard as the mortgage and real estate industries, but a housing recovery may be underway, buoyed by the government’s $8,000 tax credit for first-time home buyers and by historically low mortgage rates.

“There’s always light at the end of the tunnel,’’ said George Manemanus, president of Multi State Mortgage in Groveland, who is busier these days. ’’People are always looking to buy homes and refinance.’’

Robert Gavin of the Globe Staff contributed to this report. Todd Wallack can be reached at twallack@globe.com. ■

House Financial Services Committee Approves CFPA Legislation

After a multi-day mark-up, which included 24 approved amendments, the House Financial Services Committee (the "Committee") reported out of Committee H.R. 3126, the Consumer Financial Protection Agency ("CFPA") Act, by a vote of 39-29. While a significant portion of the original bill was left in tact, the Committee made some notable changes during the mark-up.

The main vehicle for debate was the "Discussion Draft" circulated by Chairman Barney Frank (D-MA) on September 25 (please se *BuckleySandler Regulatory Restructuring Report*, Issue Nine, Oct. 6, 2009 for a summary of the changes made by the Discussion Draft to the bill as introduced in July). Although many of the amendments to the Discussion Draft that were adopted by the Committee were minor, some significant changes were made relating to the jurisdiction of the CFPA generally, the scope of federa preemption for banks and their subsidiaries, and the regulation and supervision of banks with assets under $10 billion.

First and foremost, the Committee adopted Chairman Frank's manager's amendment, which primarily revised the scope of the persons, services and products covered by the Act. In particular, the manager's amendment clarifies the application of the Act to a number of different persons, including persons providing tax planning services (as a function of a "financial adviser"), municipal securities dealers registered with the Securities and Exchange Commission ("SEC"), SEC-registered self-regulatory organizations, national securities exchanges registered under the Securities Exchange Act of 1934, and the Municipal Securities Rulemaking Board (as entities "regulated by the SEC"), and, most notably, "service providers." This term covers any person who provides a "material service" to a covered person when providing a consumer financial product or service. Essentially, the term "service provider" covers entities that have "direct interaction" with a consumer, that facilitate the design or operations relating to the provision of such product or service, or that processes transactions relating to that product or service. However, the term does not apply to service providers that provide only ministerial support services or that do not materially affect the financial product or service. Also, under the manager's amendment, the term "financial activity" includes acting as an investment adviser regulated by not only the Commodity Futures Trading Commission and SEC, but also state securities regulators. Also, the sale or issuance of stored value remains a "financial activity," but, in the case of sale, only if the seller influences the terms or conditions of the stored value provided to the consumer.

The manager's amendment also includes new language aimed at increasing coordination between regulators, including that the Federal Trade Commission must give the CFPA Director 30 days written notice before initiating an enforcement action based on a law where there is overlapping authority, and requires federal banking agencies to share data relating to consumer complaints witr the CFPA. Finally, the manager's amendment also creates a new regime to cover the treatment of remittance transfers, including disclosure and enforcement authority, and establishes an Office of Financial Literacy to facilitate consumer education on financial products and services.

The Committee also adopted an amendment offered by Reps. Watt (D-NC) and Moore (D-KS) revamping the preemption provisions of the bill (the "Watt-Moore Amendment"). Essentially, the Watt-Moore Amendment accomplishes two things: (i) it codifies the preemption standard set forth in *Barnett Bank of Marion County, N.A. v. Nelson*; and (ii) it repeals federal preemption for operating subsidiaries of national banks and federal thrifts and overturns the U.S. Supreme Court decision in *Watters v. Wachovia* (reported in *InfoBytes Special Alert*, Apr. 17, 2007) regarding the applicability of state laws to operating subsidiaries of national banks.

The Watt-Moore Amendment states that state laws are preempted for national banks and thrifts only if (i) application of the state law would have a discriminatory effect on national banks; (ii) the Office of the Comptroller of the Currency ("OCC") or the Office of Thrift Supervision ("OTS"), as applicable, determines by regulation or order that a state law prevents or significantly interferes with the ability of a national bank or thrift to engage in the business of banking; or (iii) the state law is preempted by another federal law In addition, the Watt-Moore Amendment provides that "a State consumer financial law shall apply" to a subsidiary or affiliate of a national bank or a federal thrift to the same extent that it applies to any person subject to such state law and consistent with federa law. Further, the Watt-Moore Amendment appears to remove *Chevron* deference for OCC and OTS interpretations regarding preemption "as a matter of law," while preserving such deference for rulings interpreting the National Bank Act or the Home Owners' Loan Act, or other federal laws.

The Watt-Moore Amendment does include a savings provision to avoid retroactive application, which states that any contract entered into prior to the enactment date of this legislation (and which presumably relies upon existing preemption standards, such as *Watters*), will be unaffected. During the lengthy discussion of this and other similar amendments addressing preemption, Republicans and some moderate Democrats supported an alternative amendment prepared by Rep. Bean (D-IL) that would preserve current preemption standards. Although the Bean Amendment failed, Chairman Frank indicated his support for continued work on the issue of preemption. Specifically, Chairman Frank hoped that the CFPA legislation will strike the right balance of federal preemption with state enforcement of federal law.

A third notable amendment adopted by the Committee, offered by Reps. Miller (D-NC) and Moore (D-KS), exempts community banks with less than $10 billion in assets and credit unions with less than $1.5 billion in assets from stand-alone CFPA

examinations. However, the smaller banks would still be subject to CFPA regulations, and the CFPA would serve as the back-up regulator, meaning: (i) the CFPA could potentially initiate enforcement actions on a case-by-case basis; (ii) CFPA examiners can still be present during the primary regulator examinations; and (iii) the CFPA can remove the primary regulator upon a finding that the regulator failed to adequately examine the institution. It is expected that further amendments to this "small bank" exemption will be offered on the House floor, potentially to apply the exemption to all banks that hold less than 1% of all U.S. deposits, or to banks that do not have an audit team onsite.

Other approved amendments during the mark-up include the following, among other things:
Exempting persons regulated by a state insurance regulator from coverage, including explicit exemptions for credit insurance, mortgage insurance, and title insurance from coverage;

- Exempting manufactured home, modular home retailers, and auto dealers from coverage;
- Clarifying that the CFPA Director may not prescribe a rule or regulation, or take any action, that would have the effect of requiring a covered person to offer a specific financial product or service;
- Requiring the Consumer Financial Protection Oversight Board (the "Board") to include five members to the Board who are experts in consumer protection, fair lending and civil rights, representatives of depository institutions that primarily serve underserved communities, or representatives of communities that have been significantly impacted by higher-priced mortgage loans;
- Requiring the CFPA Director to promulgate rules addressing appraisal independence requirements;
- Requiring the CFPA to establish a single, toll-free telephone number for consumer complaints regarding covered entities; and
- Requiring the CFPA to conduct an "annual financial autopsy" that identifies causes of consumer foreclosures and bankruptcies during the previous calendar year, including any specific products or services that "have been the cause of substantial numbers of such bankruptcies or foreclosures."

Throughout the mark-up, Committee Republicans expressed concerns about a number of issues, including, among other things: (i) the vagueness of certain key terms of art in the legislation that may potentially allow the CFPA to expand its reach beyond what is contemplated; (ii) the potential of the CFPA to limit consumer choice and constrict of credit; (iii) the likelihood of costs of compliance being passed onto consumers; and (iv) the dangers of bifurcating and undermining the safety-and-soundness regime. Chairman Frank maintained throughout that the concerns were unjustified, but committed to work with Republicans to further define certain terms, including the term "abusive." He also acknowledged that the bill represents a substantial increase in authority over nondepository financial institutions.

A copy of the Discussion Draft of H.R. 3126 is available at http://www.house.gov/apps/list/press/financialsvcs_dem/discussion_draft_of_cfpa_bill_092509.pdf. Copies of each of the amendments considered by the Committee may be found at http://www.house.gov/apps/list/speech/financialsvcs_dem/markup_100809.shtml.

Kevin M. Cuff, MPA
Executive Director
Massachusetts Mortgage Bankers Association
617/570-9114
kmcuff@massmba.com