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Why merge financial agencies?

By Mark Peters And Mohana Terry | February 21, 2011

Gov. Andrew Cuomo has proposed merging New York's Insurance and Banking departments and the Consumer Protection Board into a single state agency, to be known as the Department of Financial Regulation. Depending upon how events unfold in Albany -- and depending upon your perspective -- New York is either poised to be once again at the cutting edge of financial regulation or about to embark on the creation of an unwieldy new regulatory regime that will chase companies to other financial centers.

What is certain, however, is that the governor and state Legislature have before them a bill that would dramatically consolidate power to regulate financial services and insurance in a single agency, giving that agency new powers and transferring other powers away from independent actors like the attorney general. If the bill is enacted, this agency will change not only the way financial services and insurance are regulated, but also the way in which market participants provide such services to New York and the rest of the country. Given these far-ranging implications, any legislative change should be subject to careful deliberation and open debate by all concerned.

So why change the world as we know it?

The bill's supporters feel that premise is simple: In a complex financial world, only a single unitary agency can police increasingly complex corporate structures that combine banking, insurance and securities.

In theory, the bill would address this by providing the Department of Financial Regulation, the new super-regulator, with a more holistic view of the activities of all companies within a holding company system, whether they are insurance companies or banks. Supporters hope that such unified regulation would prevent recurrence of the events of recent years.

Sounds good so far. After all, who wants the sky to fall down on us again?

However, the details are complex and have far-reaching implications. To begin with, the bill will consolidate power in a single agency, rather than having several independent agents keeping their eyes on the industry. Regulators and prosecutors will live under the same roof.

In addition, the bill would dramatically expand the scope of financial regulation to include a broad range of financial products, services and transactions, many of which were previously unregulated. It would significantly increase fines for violations and create a new Financial Frauds and Consumer Protection Unit to investigate financial fraud across industries.

The bill defines "financial fraud" broadly to include a wide variety of conduct, ranging from fraudulent life settlement activities to violations of the Martin Act, which gives the state attorney general expansive powers and discretion to prosecute financial fraud.

What would this all mean for industry participants and consumers?

For companies, enactment of the bill in its current form could very well be a watershed moment, changing the regulatory landscape significantly and requiring companies to modify their compliance procedures and conduct. Companies could also see an increase in the amount of their annual assessments to fund the operating expenses of their new regulator.

For consumers, there may be enhanced protections provided by the bill, assuming they can be efficiently implemented, and a single new agency can remain focused on all of them. However, an agency engaged in large-scale battles may lose focus on individual actions.

There is little doubt that the state's insurance and banking codes, written decades ago in another era, need to be updated. Any attempt to grapple with the issue is laudable. However, the effects of such changes will be far-reaching and merit careful consideration.

Such an approach will ensure that New York preserves its position as the global center of finance, while ensuring that companies are judiciously regulated.

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