

ABA Summit 2012: Does CFPB trust “the market”?

Summit session sheds light on new bureau’s attitudes and methods

By Steve Cocheo, executive editor and digital content manager

Could the Consumer Financial Protection Bureau in time teach the banking industry, especially community bankers, to love regulation?

As doubtful as that sounds, David Silberman, acting associate director for research, markets, and regulation at CFPB, gave it a try early in his meet-the-regulators session during ABA’s March Government Relations Summit.

Silberman’s title somewhat obscures that his post is a senior one at CFPB. He sits in the senior staff tier separated from bureau Director Richard Cordray only by the Chief of Staff.

“Throwing caution to the wind, I want to say a few kind words for the whole concept of regulation,” said Silberman. “I want to suggest to you that regulation is not only good for consumers and good for markets, but actually good for financial service providers in those markets.”

“It is good, if you will, for you,” Silberman told hundreds of bankers from many types and sizes of bank who turned out for the early morning meeting.

Silberman sees regulations as “guardrails”—his term—that prevent competitive pressures from dragging everyone down to a low road of competition.

Silberman portrayed banks as service businesses dependent on customer loyalty and trust, but also servants of shareholders who expect a return on their investments. He held out regulation as a savior:

“When market practices develop where some competitors are gaining market share and driving up their earnings by selling products that may seem awfully risky and may have a chance of exploding, and by loading costs onto the back end of the product—on items that are less salient to consumers, that consumers don’t think about when they shop—it is very hard to resist those pressures, and to stay on the high road. And regulation can help you do that.” (Emphasis added.)

Later, during the question-and answer period, following up on something he thought he had heard from Silberman, G. William “Billy” Beale, president and CEO of \$3.9 billion-assets Union First Market Bankshares, asked Silberman why it seemed that CFPB intended to eliminate free consumer checking.

“We have not, to my knowledge, given any thought to doing away with free checking,” said Silberman, apologizing if he’d given the wrong impression. “It is very much against the grain of the bureau to regulate prices in any way. That’s what the markets are for.”

Roots in credit card promotion

Markets have been, and are, in Silberman’s job description. Silberman took an interesting path to the bureau. He originally came to the organization as lead for its card markets division. Immediately prior to taking that post, he had been general counsel and executive vice-president of Kessler Financial Services, a privately held firm that developed credit card and other financial programs for membership organizations. Prior to that, he had been deputy general counsel of the AFL-CIO, where he negotiated the labor organization’s first credit card program, “Union Privilege.” The latter was an early affinity card effort that went beyond slapping logos on cards. Among the tailored features developers put in the program was the ability to skip payments if the cardholder’s union was on strike.

This background relates to Silberman’s Summit presentation because he made a point of his own experience as typical of the market teams in his section of the new organization. Just as he came to CFPB with more than 20 years experience in the card business, he said, many other bureau employees come with experience on the regulated side of CFPB’s beat.

He detailed some of the mortgage market’s excesses during the boom that went bust—one mentioned was no-income-verification loans—and pointed out that no one in the business could have really considered such practices a good business move. Yet, because of the absence of “guardrails,” competitive pressure drove players to such behavior, he said.

Likewise, he said, drawing on his own expertise, he pointed to practices in credit card marketing and product design that were questionable, but which went on because of competitive pressures. Efforts such as 0% interest rates and fixed rates on open-end products like cards shouldn’t have made sense to anyone in the industry, he said.

“The market brought us here,” said Silberman, “and there was pain to be paid by all.”

Tools for taking on the market

Early on in the bureau’s life top officials frequently used the term “data driven” to describe their goal for CFPB regulatory policy. Silberman explained that this is why his unit includes research, markets, and regulation.

Picking up on themes used by other bureau officials, Silberman said, “Our job and challenge is to figure out how to make the best use of our tools, and use the right tool for the right problem.” Sometimes research followed by

regulations will do it, while at other times, he said, enforcement will be necessary to make it clear what's not appropriate.

"We've built a law firm, essentially, internally," Silberman said of the enforcement operation.

Silberman spoke of the appropriate length of regulations, and of the need for regulatory flexibility.

He termed it an "urban legend" that short regulations equal better regulations. CFPB would find it much easier to write short regulations, he said, but he suggested the industry would find them tougher and less adaptable.

But Silberman said he believes the role of regulation is to flesh out, create exceptions, establish safe harbors, and generally populate the concept of a law with specific detail.

So, he said, CFPB finds clarity preferable to brevity--"even if we have to spill more ink and kill more trees in the process."

At present, a multitude of mortgage-related regulations are consuming many of the bureau's rulewriting resources, according to Silberman. He predicted that a number of high-profile proposed rules will be shooting out of CFPB in quick succession, because the Dodd-Frank Act mandates implementation of many mortgage provisions by January 2013.

Meanwhile, other efforts related to rulewriting continue. A project to streamline existing regulations has brought in more than 100 formal comments, Silberman said, as well as over 1,000 more targeted comments from the bureau's website.

Overdraft controversy

But something that clearly touched a raw spot for many community bankers is CFPB's pending overdraft study. This follows efforts in recent years by the traditional banking agencies to address overdraft account features, as well as on amendments to banking regulations that created the opt-in framework for debit card usage of overdraft features.

During the Q&A, ABA Chairman-Elect Matthew Williams rose and issued an invitation to Silberman.

Williams, chairman and CEO at \$124 million-assets Gothenburg (Neb.) State Bank, spoke of his bank's long history and ties to the community. Then he spoke of the bank's overdraft program.

"We treat our customers with trust and respect," said Williams, "and our overdraft program is part of

that trust and respect.”

He reflected on the history and potential for more regulation of overdraft. He said there seems to be a belief “that financial regulation can increase financial responsibility. But it’s simply a matter of the consumer doing what’s right.”

Then he invited Silberman to visit his bank to see how such programs operate in such a market.

“Spend some time on the ground with a local banker,” he suggested.

Silberman thanked Williams for the invitation and acknowledged that “we recognize that regulations cannot be one-size-fits-all.” He said that CFPB has been making efforts to reach out to community banks all over the country.

Specifically regarding overdraft, Silberman said that CFPB “understands that overdraft provides convenience for consumers, and, in some cases, a lifeline for consumers.”

But he said there were important questions that needed addressing, such as bank policies on the order that checks are processed in.

Perry Mason and the case of the CFPB bank examiner

A banker from a mid-sized bank holding company asked Silberman confirm what bankers have been hearing since CFPB began examinations last July. Namely that exam teams have been visiting banks of \$10 billion or more with something other than federal banking agencies’ exam staffs don’t generally pack: an enforcement lawyer. The banker suggested that this practice sends the wrong message.

“That’s what Silberman said, in confirming the attorneys’ presence on exams: “That is the way we structure our exam teams. We hope that it doesn’t send the wrong message. It seemed to us important to have a lawyer as part of the team, since the job of an examination is ‘to determine whether practices violate the law and to have legal advice as part of that. But it is still our hope and our intent and so far, our experience, to create the kind of healthy, confidential supervisory relationships that allow for open and honest exchange and private actions where private actions are needed.”

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