

FEET TO THE FIRE

Regulators get tough on bank officers, directors

By Brian Bandell

The pressure regulators are applying to banks has extended to employees and directors, who are being hit with fines and subject to job reviews.

Regulators have always had the power to hold bank officials accountable, but the rash of enforcement actions and the financial meltdown have made these formerly rare actions more frequent. The officers and directors, not the bank, must pay these fines.

Four board members and the former CEO of Miami-based Pacific National Bank were fined for failing to adhere to an enforcement order that required the bank to comply with anti-money laundering and Bank Secrecy Act laws.

Regulators issued fines against three current board members, two former board members and the former CEO of North Lauderdale-based Security Bank for not complying with an enforcement order that concerned its capital, reduction of problem assets and loan portfolio management.

Sometimes regulators give bank executives a not-so-subtle hint to leave. In early 2010, a regulatory consent order told Bank of Coral Gables to retain "qualified management," including a CEO with "proven ability in managing a bank of comparable size." Two months later, CEO Terry Best resigned.

Such language addressing specific executive positions is found in some, but not all, public enforcement actions. It often includes a requirement for the bank to hire a third-party consultant to review the performance of certain executives, and determine whether they are qualified and capable to perform the job.

This review can be instituted for board members, as well. Many enforcement orders tell board members to get more involved in the daily affairs of the bank, and attend meetings more frequently.

Regulators have the authority to not only fine bank officers and directors, but to remove them from their positions, said Lewis Cohen, a partner with Miami law firm Cohen & Bobotas. In extreme cases, regulators can demand that bank officers and directors pay restitution for making reckless substandard loans, he said.

LOANS CLOSELY EXAMINED

The treatment of loans to bank insiders and contracts for board members' businesses are other areas regulators closely examine, Cohen said. Inside directors, those who are significant shareholders, are more susceptible to fines than outside directors.

"Taking a position on a board of directors at a bank doesn't only mean attending periodic meetings and

having a position of prestige but having a position of great responsibility,” Cohen said. “Unless you take it seriously, prestige is not a good enough reason to join.”

Attorney Roger Slade, who leads the litigation department at Pathman Lewis in Miami, said people should be cautious before they accept a board position at a bank because they will be responsible for what goes on there, even if they are not the one causing problems. Before joining, the person should understand the inner workings of the bank and explore its relationship with regulators, especially if there is an enforcement action, he said.

Carlos J. Arboleda, the executive director of the national banking and financial services group for Stephen James Associates in Fort Lauderdale, said the cost versus benefit created by the regulatory scrutiny has made it take longer to fill director and executive management positions at community banks. In order to sign someone up, the job opportunity needs to be very strong, he said.

Jorge Garcia, president of Pembroke Pines-based Outsourced Training, said he has spoken with several well-qualified individuals who were offered board positions at banks over the past year, but they turned them down because of the pressures of the job.

“They felt it would take too much of their time with no direct compensation and the personal liability associated was not worth the return,” Garcia said. “One went as far as stating that his attorney and CPA advised against it.”

Garcia said some bank officers have declined positions with troubled banks because they feared that being associated with a scrutinized bank would taint their reputation with regulators.

After a bank fails, the Federal Deposit Insurance Corp. reviews the conduct of its former officers and directors to see whether they might be liable to pay claims. That often leads to an examination of their oversight of its lending and financial condition. Lawsuits against directors and officers have been filed in some cases.

“When they don’t follow prior regulatory instructions, it is evidence of recklessness,” said Richard Lydecker, founding partner of Miami law firm Lydecker Diaz. “That does become some of the evidence to suggest that a director or officer should be liable for not fulfilling their directives.”

Lydecker said regulators have called the valuation of assets on banks’ balance sheets into question, and discovered that some assets were overvalued based on an overreliance of the reputation of the businesspeople involved. In some cases, banks bought bad loans from other banks without requiring more equity into the deal, he added.



Lydecker

“The days of sitting on a board and passively allowing things that you don’t think are in the best interest of the company to continue ended with that recession,” Lydecker said.