

Monday, March 25, 2013

By electronic delivery to:

Judith Dupre
Executive Secretary
Federal Financial Institutions Examination Council
L. Seidman Examination Center
Mailstop: B-7081a
3501 Fairfax Dr.
Arlington, VA
22226-3550

*Re: Social Media Comments
Docket Number FFIEC-2013-0001*

Dear Ms. Dupre;

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the issues raised by the Federal Financial Institution Examination Council's ("FFIEC") notice of proposed guidance, *Social Media: Consumer Compliance Risk Management Guidance*² (the "Proposal"). Recognizing the increasing popularity of social media platforms for bank-to-customer and customer-to-bank communication, the Proposal outlines new supervisory expectations for managing social media risk.

As written, the Proposal presumes that all banks are voluntarily and actively using social media and every bank has the sophistication and resources to monitor and respond across a multiplying universe of social media platforms. It would be preferable if the Proposal recognized that bank use of social media occurs across a continuum of sophistication, activity, and engagement, and accordingly, supervisory expectations were gauged to a bank's use, access, and risks. The Proposal would be enhanced further by focusing on banks that are active and voluntary users of social media and offering guidance where it is needed—particularly the expansion of the Regulation Z "One Click Rule" and the extension of the FDIC "practicality" exception to social media.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$185 million in assets.

²78 Fed. Reg. 4848 (January 23, 2013).

I. Proposal Should Focus on Issues Where the Industry Needs Guidance.

If the agencies perceive a need for guidance addressing social media use and engagement, the Proposal should focus on those issues where greater clarity would enhance the ability of the banking industry to serve the needs and demands of its customers.

a. The Proposal Should Extend the “One Click” Rule and Expand the “Practicality” Exception to Social Media.

Coupling an extension of the Regulation Z “One Click Rule”³ with an expansion of the Federal Deposit Insurance Corporation (FDIC) logo “practicality” exception⁴ will ease bank compliance on social media channels and improve consumer understanding of bank products. The practicality exception would recognize the limitations placed on bank communications by third-party controlled social media channels, while the extension of the “One Click Rule” would assure that the needed information is still available to customers by URL web link when including all required disclosures and details is not feasible within an individual social media communication.

i. Extending the One Click Rule to Social Media Advertising is Essential.

Under Regulation Z’s broad definition of advertising that includes any commercial message that promotes consumer credit,⁵ social media activity could possibly be considered an advertisement and therefore subject to Regulation Z disclosure requirements. Of particular importance to banks using social media is Regulation Z’s “One Click” rule that governs proper disclosures for web-based advertisements. Like the banner and pop-up advertisements that originally gave rise to the rule, social media channels often limit the space and amount of text in a communication.⁶ The reasoning for the “One Click Rule”, which was originally designed for online advertisements on a bank’s website, should be extended to social media channels, which operate within more restrictive constraints.

³ Regulation Z allows for disclosures to be “one click” away from the advertising language. The Commentary to Sections 1026.16(c) [open-end credit] and 1026.24(d) [closed-end credit] state, “. . . A term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information”.

⁴ 12 C.F.R. 328.3(c)(1) “Except as provided in § 328.3(d), each insured depository institution shall include the official advertising statement prescribed in § 328.3(b) in all advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the institution.” The practicality exception, as codified at 12 C.F.R. 328.3(d)(9), states “[a]dvertisements which are of the type or character that make it impractical to include the official advertising statement, including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains. . . .”

⁵ 12 C.F.R. 1026.2(a)(2) “Advertisement means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.”

⁶ For example, Twitter (www.twitter.com) limits communication (“tweets”) to 140 characters. By necessity, banks on Twitter must include a shortened URL web link to disclosures and other customer information hosted on the bank’s website.

Preserving and expanding the “One Click Rule” to social media communications is essential to distributing disclosures and customer information. If the “One Click Rule” is not formally recognized for social media, banks will have difficulty including complete disclosures on social media channels. In response, banks would either have to prohibit the use of social media channels to promote products or services that require disclosures, or have to include the complete text of disclosures within social media communications. The absence of the “One Click Rule” from social media would severely limit the effectiveness of the bank messaging and the quality and availability of customer service.

ii. Expansion of “Practicality” Exception for Use and Placement of FDIC and Equal Housing Lender (EHL) Logo is Crucial.

When banks were first venturing into social media, the proper use and placement of FDIC and EHL logos was a common question, but now as engagement has matured, banks active on social media channels understand when to display the required logos. Rather than focus on the placement of the logos, the banking industry would be better served by an expansion of the “practicality” exception to include social media channels and electronic advertising. Where a third party restricts the space and text available on a social media channel, it is not practical to include the logo or official advertising statement on every social media communication. Often, images are reduced to micro-sized pictures, and the inclusion of a logo or text may not be practical, rational, or easily read by the customer. Moreover, a social media channel provider may limit where pictures and graphics can be placed and how a bank may customize a page or surrounding advertising banners. A general statement may be helpful to recognize that the logo need not appear on every communication and that the regulation may be satisfied by placing the logo or official advertising statement on the bank landing page or home page.

b. Focus on the Management and Mitigation of Social Media Risk

The Proposal uses the word “control” in reference to bank management of risks related to social media; however, due to the operational dependence on third party platforms and the interaction with customer and non-customer third parties, a bank cannot control unauthorized third party actions that implicate the financial institution. Wherever used in any guidance, the term “control” should be replaced with terms “manage” or “mitigate” as appropriate.⁷

c. Bank Response to Account Hacking and Takeover

⁷ 78 Fed Reg at 4849. The Proposal states “...ensure institutions are aware of their responsibilities to oversee and control these risks...” This sentence should be rewritten as “...oversee and mitigate these risks...”

As demonstrated during the recent account takeover of a popular fast food restaurant,⁸ banks with an active presence on social media need to be prepared for incidents of hacking and account takeover of their social media pages. Unlike the hack of a bank's website, hacking a social media account often does not compromise customer account information, but likely poses reputational risk. Any guidance should (1) recognize the difference between the hacking of bank website versus a social media landing page, and (2) offer clarity on differing expectations of bank response in the event of an account takeover or hack of a social media page where customer information is not compromised.

d. Social Media Privacy and Use of Customer Information

Any guidance should provide financial institutions with clarity on the appropriate use of information available through social media channels. For example, the Proposal could address how banks may use data to perform appropriate customer due diligence, identity confirmation, or to assist in fraud investigations, or the increasingly common practice of using data to improve the quality and availability of products and services to customers.⁹ The Proposal also could offer practical guidelines on when to notify consumers about information collected from social media users, and expected bank communication with users when there are changes to privacy standards of third party operated social media channels.

II. Application of the Guidance should be Limited.

The Proposal has an inherent expectation that implementing institutions are well acquainted with social media, have sophisticated social media strategies, and are easily positioned to comply with monitoring, risk management, and employee training obligations. This is a false assumption. Historically, banks lagged behind other business in adoption of social media for advertising.¹⁰ A 2012 ABA survey found that almost 50% of banks in the United States did not have an active social media presence.¹¹ The study further concluded that “larger banks are quicker to adopt social media than smaller banks... whereas more community banks are still evaluating or not even planning to use social media.”¹²

⁸ Elana Zak, *Burger King's Twitter Account Hacked*, The Wall St. J. Blog, (Feb. 18, 2013), <http://blogs.wsj.com/digits/2013/02/18/burger-kings-twitter-account-hacked/>.

⁹The practice of using data for product development and offerings, and other appropriate business purposes, presents substantial issues and should be addressed in detail. Potentially, these uses of information will impact third party contracts, marketing, and application-taking procedures.

¹⁰ Frank Sorrentino, *Dear Bank CEOs: Take the Social Media Plunge*, Forbes, (Oct. 16, 2012), <http://www.forbes.com/sites/franksorrentino/2012/10/16/dear-bank-ceos-take-the-social-media-plunge/>.

¹¹ *ABA Retail Banking & Alternative Delivery Benchmarking Survey Report*, 2012. “As social media continues to grow, many banks are responding to its potential value as a marketing tool. Among all survey respondents, 51.2 percent said their bank currently utilizes social media, while 16.3 percent plan to use it in the next three years[.]. This social media adoption rate seems to be higher among banks of larger sizes (57.1 percent for mid-sized banks as opposed to 46.4 percent for community banks).”

¹² *ABA Survey*. “In fact, after a review of survey results, it appears that even though the sum of these percentages are similar for both bank sizes, larger banks are quicker to adopt social media than smaller banks. Looking down the

a. Applicability Should be Limited to Banks with Voluntary “Engage[ment],” “Usage,” and “Access” to Social Media Channels.

The Purpose statement of the Proposal mentions “activities conducted via social media[,]”¹³ “use of social media[,]”¹⁴ “social media usage and access[,]”¹⁵ and the types of social media in which the financial institution is engaged....¹⁶ This language implies that the guidance is intended for financial institutions that have made the voluntary decision to use social media and have a routine presence on social media channels as part of their corporate marketing and communication strategy. However, the Proposal goes beyond a class of sophisticated bank users to impose obligations on all banks, including those having no active social media presence. These institutions may have an involuntary presence on social media by the mere act of being mentioned in a negative comment posted by a non-customer member of the general public, or may be the subject of an unauthorized unofficial landing page. In these instances, the bank is neither the owner of the page, nor the intended recipient of the comment, and thus should not be subject to the obligations of the Proposal by mere incident of third party action.

b. The Proposal Imposes Substantial Obligations on Banks Not Active on Social Media.

Although the Proposal states it “does not impose additional obligations on financial institutions...,”¹⁷ it does impose new and substantial obligations on all financial institutions, particularly those institutions that have made the business decision not to engage in social media. Rather than be burden-neutral, the Proposal finds “a financial institution that has chosen not to use social media should still be prepared to address the potential for negative comments or complaints and provide guidance for employee use of social media.”¹⁸

spectrum of social media adoption, more of the larger-sized banks are on the upper spectrum, whereas more community banks are still evaluating or not even planning to use social media.”

¹³78 Fed Reg 4849.*Purpose.*

¹⁴ *Id.* “The guidance is intended to help financial institutions understand potential consumer compliance and legal risks, as well as related risks, such as reputation and operational risks associated with the use of social media, along with expectations for managing those risks.”

¹⁵ *See Id.* “Although the guidance does not impose additional obligations on financial institutions, as with any new process or product channel, financial institutions must manage potential risks associated with social media usage and access.”

¹⁶78 Fed Reg 4849. “. . . financial institutions should ensure their risk management programs provide oversight and controls commensurate with the risks presented by the types of social media in which the financial institution is engaged....”

¹⁷ *Id.* at 4850.

¹⁸ *See Id.*

The Proposal fails to consider those financial institutions that do not voluntarily use social media. Many non-user banks have elected not to engage on social media channels and block employee access to social media channels during work hours. For these institutions, the Proposal creates substantial burden to monitor social media as well as to implement a social media risk management program and enhance employee training unnecessarily.

i. Burden to Monitor Social Media Should Be Limited to Banks Active on Social Media and Determined by the Bank’s Risk.

The burden of monitoring social media generally is of particular concern. The proposal repeatedly mentions a bank’s responsibility to monitor social media outlets for fraud, threats to bank reputation, and comments about the bank, both general discussion as well as negative comments and complaints. However, the proposal does not distinguish that unlike traditional marketing channels, social media is global and polylingual.

The requirement to monitor without limitation creates an obligation to monitor all social media channels, international and domestic—many of which are outside of a bank’s awareness, control, or linguistic capability. Moreover, the expectation to monitor should only include channels that are publicly accessible and to which the bank has access. For example, a bank should not be expected to monitor a private message board or online forum to which the bank does not have access and cannot monitor.

The expectation to monitor should not extend to banks that are not active in social media. Preferably, any obligation to monitor should be based on the relevant risks presented by an individual bank’s level of use, access, engagement, and the specific channels within a bank’s social media footprint.

ii. Banks Should Rely on Usual Employee On-Boarding Procedures and Policies Governing Employee Conduct Generally.

The Proposal establishes an expectation for all banks to implement monitoring and oversight obligations on employee use of social media. However, the Proposal is overly prescriptive and does not distinguish between banks with active voluntary social media programs, and banks with no active social media program. This distinction is essential. Some banks with active social media programs encourage employees to post and interact with bank customers via specified social media channels; others have no active social media program or restrict interaction to specified employees. In each instance, the appropriate level of employee training and bank oversight of employee use differs.

As written, the Proposal imposes several categories of employee training without exception to “provide guidance for employee use,”¹⁹ implement an employee “training program,”²⁰ and develop “audit and compliance functions to ensure compliance with policies.”²¹ However, many banks do not have resources to broadly monitor and regularly audit employee behavior – particularly employee activity occurring outside the bank, outside of well-known social media channels, or outside of work hours. Banks would be better served if the Proposal recognized that the expectation to monitor employee use should be reasonable and scalable to manage the particular risks arising from an individual bank’s social media strategy, and level of engagement on social media platforms.

Current Practices of Employee Social Media Training Are Adequate.

It is routine practice for banks to incorporate social media training as part of their employee handbook and on-boarding procedures for new employees. Most financial institutions, *including those not active in social media*, have an employee use policy governing employee behavior on social media.²² However, employees directly involved with developing content, approving content, monitoring communications, and posting to social media channels often have advanced training and may be subject to a differing employee use policy.²³ The Proposal would be improved by mention that policies and procedures governing employee use may differ across the industry in response to the bank’s marketing strategy and level of employee engagement.

III. The Guidance Should Have a Clear Purpose and Supervisory Use

The Proposal is not a comprehensive review of regulations and management practices. Rather, the proposal offers a cursory summary of social media issues, and thus the intended purpose of the proposal is unclear. If merely an informal review of issues of concern for new bank users of social media, the material would be more appropriate as an interpretive letter, agency handbook, or telephone briefing.

¹⁹ 78 Fed. Reg. at 4850.

²⁰ Id. at 4849.

²¹ Id. at 4850.

²² *ABA Survey*. “As the use of social media further penetrates the banking industry, more banks seemed to opt for a social-media specific policy governing employee use. Almost 55 percent of respondents using social media reported having a separate policy, compared to 24.0 percent with a policy covered under code of ethics or code of conduct.”

²³ Id. “[A]lmost 60 percent of survey respondents said that they allow only selected employees to utilize social media on the bank’s computers.”

a. What is the Purpose of the Proposed Guidance?

The immediate need for social media guidance is unclear. Many of the questions coming from industry over the past five years when bank use of social media was in its infancy have been resolved through experience. With the increase in guidance issued by the banking agencies, banks are reporting a trend whereby statements issued as non-supervisory guidance are developing into regulation-like rules through examiner enforcement. What will the issuing agencies do to prevent this proposed guidance from a similar guidance/enforcement cycle? What instructions are to be given to examiners and financial institutions to assure that the guidance is properly implemented during exams? An interpretive letter may be a better vehicle to recognize social media as advertising, while avoiding the potential enforcement through examination that frequently occurs with agency-issued guidance.

i. The Proposal Neither Addresses How Banks Currently Use Social Media, Nor Likely Future Uses.

Social media is a form of communication with new and existing customers. In an attempt to be forward-looking, the guidance makes recommendations for social media beyond mere communication methods and suggests that social media channels can be used as a customer service tool or account-opening platform for submitting applications or facilitating payments. Presently, social media channels do not enable financial institutions to embed servicing tools or account-opening platforms into a landing page. The common use of social media channels is to communicate with customers and then redirect them to the bank webpage or customer service representative.²⁴ If a social media-based widget, application, or tool were to become available, the governing bank regulation—not the proposed guidance—should address clearly and concisely how those tools should be used.

ii. The Proposal Is Confusing and Incomplete.

To avoid confusion, the Proposal should be substantially shortened, mention of specific regulations should be removed, and the text should affirm that the guidance is not comprehensive and not intended as a definitive checklist of all social media regulations and risk management procedures. Moreover, the guidance should put financial institutions on notice that other federal regulatory agencies may have regulations governing social media use, such as the social media specific rules issued by the Securities and Exchange Commission (SEC),²⁵ Financial Industry Regulatory Authority (FINRA),²⁶

²⁴ See Id. . “The leading purpose banks use social media was posting community events, followed by providing financial tips and education, brand marketing, and providing updates to customers on products and services.”

²⁵ *Investment Adviser Use of Social Media*, National Examination Risk Alert, Securities and Exchange Commission, (Jan. 4, 2012), available at <http://www.sec.gov/about/offices/ocie/riskalert-socialmedia.pdf>. *Filing Requirements for*

Federal Trade Commission (FTC),²⁷ and the National Labor Relation Board's (NLRB)²⁸ many decisions on employee use of social media.

b. Implementation should be Scalable and Resource-Appropriate.

For examination purposes, the Proposal must assertively state the necessity of having a social media risk management program that not only is “commensurate with the breadth of the financial institution’s involvement in [social media]”²⁹ but also scalable and resource appropriate for the size of the institution. Often examiners will insist on compliance solutions that are appropriate for a large institution, such as a costly third-party monitoring and archiving service, but may neither be resource nor risk appropriate for a smaller institution. Scalability involves not merely the cost of a service, but also the burden of compliance. For example, some banks may have a simple employee use policy, while others have an extensive training program. Obligations to monitor employee use of social media channels should not be expected as the normal course of business for all financial institutions. Examiners should be reminded that appropriate implementation of a social media risk management program need not be expensive, burdensome, or time-consuming in order to be risk appropriate.

IV. Definition of Social Media and Treatment of Platform Providers should be Clarified.

The proposal defines social media as “a form of interactive online communication in which users can generate and share content through text, images, audio, or video.”³⁰ The guidance should clearly state that social media does not include email and other online ext-based forms of communication that are not intended to be widely disseminated to the public, such as third party email distribution lists and private forums or messaging services.³¹ Moreover, banner advertisements integrated into social media pages should not be considered social media.

Certain Electronic Communications, Guidance Update, Securities and Exchange Commission, (March 15, 2013) available at <http://www.sec.gov/divisions/investment/guidance/im-guidance-update-filing-requirements-for-certain-electronic-communications.pdf/>.

²⁶ *Guide to The Web for Registered Representatives*, Financial Industry Regulatory Authority (FINRA), March 25, 2013, <http://www.finra.org/Industry/issues/Advertising/p006118/>. The FINRA website includes a detailed review of the rules governing advertising for registered representatives, including FINRA Regulatory Notice 10-06 *Guidance on Blogs and Social Networking Web Sites*, Regulatory Notice 11-39 *Guidance on Social Networking Websites and Business Communications*, and NASD Rule 2210 *Communications with the Public*.

²⁷ *Com Disclosures: How to Make Effective Disclosures in Digital Advertising*, Federal Trade Commission, March 12, 2013, available at <http://ftc.gov/os/2013/03/130312dotcomdisclosures.pdf/>.

²⁸ *Report of the Acting General Counsel Concerning Social Media Cases*, National Labor Relations Board, Jan. 12, 2012 and May 12, 2012.

²⁹ 78 Fed. Reg. 4850. *Compliance Risk Management Expectations for Social Media*.

³⁰ 78 Fed. Reg. 4849. *Background*.

³¹ Many banks place advertisements through third party online platforms, which may have a “social” element. For instance, Bloomberg and Gmail have the ability to send blast communications to a large group of individuals. The social nature of the communication and the size of the distribution (250+ people) could fall within the broad definition of “social media” as defined in the Proposal.

When coupled with a social media platform, some email distributions and advertisements may share some characteristics of social media but are not an “interactive online communication...[to] generate and share content” and should be excluded from the proposed definition of social media.³² As such, the definition of social media should be revised to state “a form of interactive online communication in which users can generate and share content, through text, images, audio, or video, intended to be widely disseminated via a social media platform that is generally available to, or for which membership is generally open to, the public.”

Deleting mention of specific social media channels would further improve the definition of social media.³³ The social landscape is ever changing, and platform popularity waxes and wanes with consumer preferences. The naming of specific social media channels, such as MySpace, while ignoring newly popular channels such as Instagram and Pinterest, will cause the Proposal to become outdated as new social media channels emerge.³⁴

Platform Providers are Not Third-Party Service Providers.

The Proposal should clarify that the relationship with providers of social media platforms does not necessarily rise to the level of a traditional bank-service provider relationship. When a bank uses popular social media platforms, it generally does not have the ability to negotiate terms that govern the relationship between the social media platform provider and the bank. As such, any monitoring and controls that a bank might implement with respect to a platform provider should be based on an assessment of the particular risks of an individual social media platform.

V. The Guidance Should Not Define Complaint for Social Media Purposes

Although general guidance on responding to complaints posted to social media channels may be helpful, the Guidance should not define a complaint for social media purposes. Financial institutions, both those actively using social media and those that are not, have procedures and policies to address complaints and to ensure consistency in response and escalation. Within social media communications, the definition of a complaint should be determined by an institution’s policies, procedures, and reasonable interpretation of the governing regulations. This flexibility in implementation is essential as new social media-based modes of communication are developed.

³²78 Fed Reg 4849.*Background Information.*

³³*ABA Survey.* “Survey results show that the most popular social media services currently used by banks are Facebook and LinkedIn, followed by Twitter and YouTube.”

³⁴Once the top ranking social media channel, Myspace has been losing market share since 2010 and now ranks fifth among the most popular social media sites. The top ranking channel in 2013 is Facebook, which is facing competition from Twitter, Instagram, Pinterest, LinkedIn, and Google+ among other channels. EbizMBA.com, *Top 15 Most Popular Social Networking Sites*, (March 2013).

a. Banks that Are Active Users of Social Media Have Satisfactory Processes and Procedures to Identify and Respond to Complaints Posted on Social Media Channels.

Banks are aware of the constraints and differences posed by communication on social media channels compared to traditional advertising. The dynamic nature of social media and informal conversational tone of the communication requires the use of reasonable judgment to assure complaints are identified and handled properly.³⁵ Most banks with an active social media presence address social media complaints either by incorporating procedures into their general complaint policy, or as a separate social media policy. The most common practice is to revise existing policies, such as the complaint and employee use policies, to incorporate social media. A separate policy is not necessary, and may cause confusion.

As banks have become more familiar with social media, industry practices have matured and processes have been modified. Generally, the Chief Marketing Officer, corporate communications department, or similar senior executive approves and manages a bank's social media policy.³⁶ Complaints requiring specific expertise are routed to appropriate internal staff. When necessary, communication professionals work in conjunction with subject matter experts to respond. When appropriate, responses include a request for direct contact by phone, private message, or link to the bank's website. Where comments are negative, efforts are made to disarm the situation by suggesting that the individual contact the financial institution directly. Any allegations of illegal treatment receive an escalated response and often are forwarded to legal counsel and senior management to be handled according to existing policy and procedures.

b. Customers Have Many Options to Submit a Complaint to a Bank that Is Not Active on Social Media.

Financial institutions that are not active on social media should not be required to respond to complaints posted haphazardly on various social media channels and not provided directly to the institution. Customers have a myriad of ways to communicate problems to a financial institution outside of social media platforms. As a matter of course, banks have procedures in place to respond to complaints communicated via telephone, letter, fax, or in-person. If a customer prefers to communicate electronically, most banks also allow customers to communicate by email or through a bank's official website.

³⁵ *ABA Survey*. "Over 86 percent said they would respond to a negative comment about bank products/services posted on a social media site within 24 hours or less."

³⁶ *Id.* "Regarding social media operations and policy, almost all survey respondents that use and staff social media reported that social media operations are being staffed in the marketing department (95.5 percent)."

c. Human and Technological Impediments Hinder Monitoring Social Media for Complaints.

The varying and multiplying social media platforms, the multitudinous manner in which social media is used by consumers, and rapid technological changes embraced by social media providers create significant human and technological impediments to monitoring social media for complaints. Some social media channels allow consumers to communicate anonymously, and banks may not have sufficient information to identify the consumer in order to respond to the concern. If relying on a monitoring service which locates comments based on key words, a consumer complaint may be missed if the key word is misspelled or if the complaint is posted as a picture, video, graphic, or audio file. The Proposal should recognize the human and technological barriers to social media monitoring and rely on a bank's risk analysis and adherence to policies and procedures for monitoring, identifying, and responding to complaints.

VI. Guidance Should Not Impose New Oversight Obligations on Boards of Directors

Of particular concern is the Proposal's use of the phrase "board of directors or senior management"³⁷ without acknowledgement that a bank's board and senior management are differing entities with differing management roles and expertise. The Proposal should avoid supervisory boilerplate language which relies on phrasing that blurs important management distinctions. Routinely using the board for piecemeal approval of business minutiae is not appropriate for the role they play at the bank and detracts from a bank's ability to serve its customers.

According to the Office of the Comptroller of the Currency (OCC), the proper role for the board is more broadly focused on operational and managerial oversight than the Proposal suggests. The OCC's *The Director's Book* states, "[t]he board must establish an appropriate corporate culture and set the "tone at the top," hire and retain competent management, stay informed about the bank's operating environment, and ensure that the bank has a risk management system suitable for the bank's size and activities."³⁸ The participation of bank boards of directors and senior management often is limited to a high-level awareness and oversight of social media within the broader context of bank marketing, and reputation risk. Senior executives likely are directly involved in social media strategy and implementation,

³⁷ 78 Fed. Reg. 4850

³⁸ Office of the Comptroller of the Currency, *The Director's Book: The Role of a National Bank Director* (2010), 19. The FDIC makes a similar statement about the oversight purpose of the board of directors in their *Pocket Guide for Directors* (2007). "A financial institution's board of directors oversees the conduct of the institution's business. The board of directors should: select and retain competent management; establish, with management, the institution's long- and short-term business objectives, and adopt operating policies to achieve these objectives in a legal and sound manner; monitor operations to ensure that they are controlled adequately and are in compliance with laws and policies; oversee the institution's business performance; and ensure that the institution helps to meet its community's credit needs."

but banks generally do not require board approval or evaluation of specific social media uses, channels, or strategy. Rather social media is considered as a part within a larger general marketing or communication plan presented to the board of directors for policy or audit approval. Alternatively, some banks—when first considering whether to engage in social media—may establish a social media steering committee with relevant staff, including directors and senior management, to develop, evaluate, and approve the initial social media business case.

VII. Activities Impacted by Social Media Should Be Addressed Directly and Substantively in the Applicable Governing Regulation.

The purpose and utility of the regulatory *alphabet soup* listing is unclear and should be deleted. If the regulatory list is not comprehensive, then what is its supervisory or examination purpose? In regards to existing regulations, the Proposal is redundant, especially when a regulation already addresses use of electronic media. In order to avoid inconsistency in interpretation and implementation, social media should be addressed in each governing law or regulation and not given superficial treatment. Merely mentioning a regulation generally is not helpful to banks, particularly those new to social media and attempting to develop a comprehensive regulatory response to social media activities. Moreover, the list of regulations could lead to confusion or contradictory and inconsistent interpretation. It is preferable for the review of regulations to be removed from the Proposal.

ABA appreciates the opportunity to comment on the Proposal. Thank you for considering our comments and recommendations. Please contact me at ddepierri@aba.com or (202)663-5333 with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Denyette DePierro". The signature is fluid and cursive, with the first name being the most prominent.

Denyette DePierro
Senior Counsel