Final FFIEC Guidance Highlights Importance Of Social Media Management For Financial Institutions

Financial institutions use social media in a variety of ways, including marketing products and services, increasing brand awareness, providing discounts and other incentives, facilitating account applications, inviting consumer feedback, and reaching new customers. As with any product channel, however, financial institutions are expected to ensure that their risk management programs provide appropriate oversight and control over the risks posed by social media platforms.

To that end, on December 17, 2013, the Federal Financial Institutions Examination Council (the "FFIEC") released final guidance for financial institutions engaging in social media, entitled *Social Media: Consumer Compliance Risk Management Guidance* (the "Guidance"). The Guidance applies to all banks, savings associations, and credit unions and to all nonbank entities supervised by the Consumer Financial Protection Bureau. While the Guidance does not impose any new obligations, it is designed to help financial institutions understand potential legal, reputational and operational risks associated with the use of social media, as well as outline compliance risk management expectations for identifying, measuring, monitoring and controlling these risks.

The Guidance recommends that financial institutions' risk management programs include the following elements:

- ***Governance Structure***: A clearly defined governance structure directing how using social media contributes to the strategic goals of the institution and establishing controls and ongoing assessment of risk in social media activities.

- ***Policies and Procedures***: Policies and procedures regarding the use and monitoring of social media and compliance with all applicable consumer protection laws and regulations, including those governing deposits, credit and lending products (*e.g.*, Truth in Lending Act/Regulation Z, Equal Credit Opportunity Act/Regulation B), debt collection, credit reporting, unfair and deceptive trade practices, electronic payment systems (*e.g.*, Electronic Fund Transfer Act/Regulation E, UCC, and the Expedited Funds Availability Act/Regulation CC), check transactions, data collection and privacy (*e.g.*, Gramm-Leach-Bliley Act, CAN-SPAM Act, Telephone Consumer

Protection Act, COPPA, Fair Credit Reporting Act), and anti-money laundering programs.

- ***Third-Party Due Diligence***: A risk management process for selecting and managing third-party relationships in connection with social media.

- ***Employee Training Program***: An employee training program on social media including the institution's policies and procedures for official, work-related use of social media, and a clear definition of all impermissible social media activities. (Even though the Guidance does not impose a specific approach to employee personal use of social media, it does caution financial institutions to recognize that such communications may still be viewed by the public as representing the financial institution's official policies, depending on the form and content of the communications themselves.).

- ***Oversight Process***: An oversight process for monitoring information posted to social media sites administered by the financial institutions. The Guidance does not require that financial institutions monitor and respond to all Internet communications about it; however, it does recommend that financial institutions consider, based on their own risk assessments, whether, when and how to respond to consumer inquiries, complaints or comments.

- ***Audit and Compliance Process***: Audit and compliance functions to ensure ongoing compliance with internal policies and applicable law and regulations.

- ***Periodic Reporting***: Parameters for providing periodic reporting to the institution's board of directors or senior management about the effectiveness of the social media program and whether the program is achieving its stated objectives.

In designing an adequate social media risk management program, financial institutions should ensure the involvement of specialists in compliance, technology, information security, legal, human resources, and marketing. Naturally, the size and complexity of the institution's risk management program should be commensurate with the risks posed by its use of social media. That said, even if some financial institutions were to remain inactive in social media, they still need a process for responding to negative comments or complaints that surface through social media platforms, as well as providing guidance for employee use of social media.

Given the emerging best practices outlined by the FFIEC for minimizing legal, reputational and operational risks in promoting products and services online, all companies, not just financial institutions, should carefully review and update their social media policies and practices in light of the Guidance. If properly managed, social media can be an incredibly powerful component of your company's overall networking and communications mix.

A copy of the Guidance is available here.

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