

Publications

Client Alert: Publication of Customer Complaints and Reputation Risk

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Financial Institutions

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If there is nothing else that the run-up to the “financial crisis” demonstrated, it is that “reputation risk” is one of the most potentially damaging, and least controllable, risks in the banking industry. It is the basis for the proverbial “runs” that can, on the basis of unsubstantiated rumors alone, trigger a liquidity crisis and destroy an institution overnight, result in copycat runs on other institutions and adversely impact public faith in the banking system generally.

In an era when the regulatory focus is rightly on institution “risk” and on identifying, mitigating and overseeing “risk,” it seems inconsistent that facilitating the publication of unsubstantiated stories concerning ostensible customer issues with insured institutions would be encouraged.

Despite serious concerns by the industry, as announced on March 19, the Consumer Financial Protection Bureau (CFPB) has opted to publish “personal narratives” in conjunction with complaints against banking institutions. The CFPB website will carry unverified, unsubstantiated and uninvestigated narratives, in the words of the customer, describing their purported issues with a **named** institution.

Interestingly, while the name of the institution will in fact be published (as provided currently), the name of the complainant will not.

And while targeted institutions will have an opportunity to respond using a structured response system, the efficacy of that approach is subject to question. Not many institutions will want to use the CFPB website as a vehicle to enter into public debates, nor will many institutions want to risk additional claims relating to disclosure of customer information. Publication by a large federal agency also brings with it a certain level of credibility that will lend a sense of official endorsement to the complaints for certain readers, and of course serve as a source for inappropriate use by some, including competitors, the press and the plaintiff’s bar. And it is certainly subject to abuse by customers with an axe to grind irrespective of the actual underlying facts. In some venues, publishing false and misleading information concerning a bank may involve criminal penalties.

The CFPB explains that despite the risk of increased litigation, the "... Bureau believes that there is significant value in making available Bureau complaint data to help in the identification of and calling attention to **potentially unlawful behavior**" (emphasis added). So the information will apparently include **uninvestigated allegations of unlawful behavior** based on the CFPB's own policy statement. Providing a mechanism for potential libel and increased reputation risk, whether the allegations are ultimately well-founded or not, is unnecessary for agency investigation of alleged consumer issues and potentially seriously inappropriate.

Clearly the new and expanded complaint process will enhance opportunities for both reputation risk and litigation risk for financial institutions. Impacted financial institutions may also suffer an adverse impact on shareholder value.

Banking is an industry where risk management is the watchword and where even examination information is kept confidential for fear of unnecessary and unwarranted reputation risk, speculation and abuse. Putting institutions in the position of being public targets of real or imaginary disgruntled customers, whether the issues are warranted or not, is inconsistent with mitigating those risks and not necessary for regulatory agencies to address any real customer issues directly with the subject institution.

While the underlying CFPB complaint process is already in place and public in nature, bankers should be aware of, and concerned about, the increase of reputation and litigation risk resulting from this recent expansion of an already-troubling public complaint process.