



LEGAL ALERT

February 20, 2013

Proposed Supervisory Guidance on Risks of Using Social Media: Is Your Institution Prepared?

On January 17, 2013, the Federal Financial Institutions Examination Council issued its first ever proposed Supervisory Guidance on Risk Management of Social Media ("Proposed Guidance"). After the close of the 60 day comment period and consideration of comments received, the FFIEC plans to issue final supervisory guidance in this area.

The Proposed Guidance applies to all forms of social media, including micro-blogging sites (eg Facebook, Twitter, MySpace, etc.), customer review web sites and bulletin boards (eg Yelp), video-sharing sites (eg, YouTube, Flickr), professional networking sites (eg LinkedIn) as well as virtual world and social gaming sites. Social media generally includes all media that is interactive in nature as opposed to those with more static content such as company websites.

The Proposed Guidance asserts that financial institutions using social media should implement a robust risk management program. However, even where a financial institution does not use social media, the Proposed Guidance still would require the institution to be prepared for "negative comments or complaints that may arise within the many social media platforms and provide guidance for employee use of social media." Components of a risk management program should include:

- Clear guidance on who is responsible for directing how the institution uses social media.
- Policies and procedures (either alone or incorporated into other policies and procedures) that address the use and monitoring of social media to ensure compliance with applicable laws, regulations and guidance.
- A due diligence process for selecting and managing any third-party service provider relationship in connection with social media.
- Employee training for official, work-related use of social media and defining impermissible activities.
- Oversight process to monitor information posted to the institution's proprietary social media sites.
- Audit function to ensure compliance with applicable policies and procedures.

The Proposed Guidance also notes that (1) there are no exceptions from application of all relevant banking laws and regulations to services and products offered by the institution through social media and (2) institutions must be alert for potential defamation or libel risks attendant to social media where there is a broad distribution of information exchanges. In light of the foregoing, we suggest that this is an opportune time for your institution to:

Bybel Rutledge LLP
1017 Mumma Road, Lemoyne, PA 17043
Phone: 717-731-1700
Fax: 717-731-8205
Website: www.bybelrutledge.com

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship.

©2011 Bybel Rutledge LLP

- Review the Proposed Guidance at: www.ffiec.gov/press/Doc/FFIEC%20social%20media%20guidelines%20FR%20Notice.pdf
- Either review or update relevant policies and procedures or task management with drafting such policies and procedures.
- Review employee handbooks to ensure that the institution has addressed permissible and impermissible use of social media by employees.
- Review your D&O insurance policies and endorsements to ensure that the institution is covered for allegations of defamation or libel occurring on social media against directors, officers or employees.

The attorneys at Bybel Rutledge LLP are available to assist your institution and senior management with any of these reviews.

Nicholas Bybel, Jr.: bybel@bybelrutledge.com
G. Phillip Rutledge: rutledge@bybelrutledge.com
L. Renee Lieux: lieux@bybelrutledge.com
Erik Gerhard: gerhard@bybelrutledge.com
Nicole S. Kaylor kaylor@bybelrutledge.com



Trusted Advisors to Companies...Every Step of the Way.SM