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Proposal and Comment Information

Title: Prohibition on Use of Reputation Risk or Other Supervisory Tools to Encourage or Compel Banking Organizations to Engage in Politicized or Unlawful Discrimination, R-1884

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Please see enclosed comment.

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Comments on: Prohibition on Use of Reputation Risk or Other Supervisory Tools to Encourage or Compel Banking Organizations to Engage in Politicized or Unlawful Discrimination

Docket No. R-1884, RIN 7100-AH17

The Board's proposal to eliminate reputation risk from supervisory practice and to prohibit supervisory pressure tied to political or ideological considerations is necessary and long overdue. The Board is correct to recognize that reputation risk has been difficult to quantify, inconsistently applied, and vulnerable to misuse.

Reputation risk has been used for decades as a vague, subjective supervisory category that allowed examiners to influence banks' customer decisions without grounding those concerns in law or measurable risk. Codifying its removal is essential to restoring discipline and neutrality in the supervisory process. The rule is directionally correct, but several refinements would make it more effective and prevent the same problems from re-emerging under different labels.

The Need for Clear, Law-Based Supervisory Standards

The rule should require supervisors to tie any supervisory concern to a specific legal, operational, or compliance basis. Without this requirement, the same pressures that once operated under the banner of "reputation risk" will simply migrate into other categories. In past examinations, institutions were told that maintaining relationships with certain lawful industries—such as small-dollar lenders, firearms manufacturers, or politically controversial advocacy groups—posed "reputational concerns" even when the bank had strong BSA/AML controls, low credit exposure, and no operational deficiencies. In several cases, examiners did not cite a statute or regulation but instead warned that "the public might react negatively" or that "the agency would view the relationship unfavorably." In other instances, examiners labeled a relationship as "operational risk" even though the only issue raised was that the customer's business model was politically controversial, not that the bank's controls were deficient.

The rule should make clear that supervisory feedback must identify the concrete legal or operational consequence at issue. If the concern is BSA/AML exposure, the examiner should cite the specific control weakness. If the concern is litigation risk, the examiner should identify the legal theory. What should not occur is a return to generalized predictions about public reaction or political controversy.

Addressing Informal Pressure and Off-the-Record Influence

The most problematic forms of reputational pressure have often been delivered informally. Institutions have reported situations where examiners verbally suggested that continuing to serve a lawful but controversial customer "might create problems during the next exam" or that "the agency would prefer to see the relationship wound down." These statements were undocumented, not tied to any legal requirement, and not subject to internal review. In some

cases, banks exited entire sectors after being told privately that "Washington is watching this area closely," even though no supervisory findings were issued.

If the Board intends to stop this practice, it must create a mechanism for institutions to seek review when they believe supervisory communications cross the line. A simple, effective approach would be a neutral review channel—outside the examination team—where institutions can submit disputed communications and receive a written determination. This would deter inappropriate influence and give the Board visibility into patterns of behavior that cannot be captured through written guidance alone.

Clarifying the Treatment of Conduct with Real Legal Consequences

The proposal should make clear that eliminating reputation risk does not prevent supervisors from addressing conduct that creates genuine legal or operational exposure. Many forms of misconduct carry reputational implications, but the reputational aspect is not the reason they matter. For example, if a bank's payment processor client is repeatedly the subject of consumer complaints alleging unauthorized withdrawals, the supervisory concern is not "reputation risk." The concern is potential violations of the Electronic Fund Transfer Act, unfair or deceptive acts or practices, and operational weaknesses in due diligence and monitoring. The rule should explicitly state that supervisors may address conduct that creates litigation risk, enforcement risk, consumer harm, or operational failures, even if that conduct also affects public perception.

Providing Concrete Examples to Ensure Consistency

Given the long history of reputation risk in supervisory practice, both examiners and institutions will need clear examples to understand the boundaries of the new rule. The Board should publish illustrative scenarios showing what constitutes prohibited political or ideological pressure and what constitutes legitimate supervision grounded in law. For example, it should be clear that an examiner may not tell a bank that serving a lawful advocacy group "could damage the bank's reputation." Conversely, it should be equally clear that an examiner may raise concerns about a customer whose business model creates demonstrable BSA/AML exposure, operational risk, or consumer harm, provided the concern is tied to specific legal or operational deficiencies.

Preventing Other Supervisory Practices from Replicating the Effects of Reputation Risk

In addition to eliminating reputation risk, the Board should ensure that other supervisory practices do not replicate the same effects under different labels. Unwritten or inconsistent BSA/AML expectations, verbal supervisory guidance, and the use of broad "high-risk" categorizations can exert the same pressure on institutions to exit lawful sectors, even when those practices are not tied to specific legal requirements. These forms of supervisory signaling can influence customer-facing decisions just as strongly as explicit references to reputation risk. Any supervisory expectation that affects a bank's willingness to serve a lawful customer or sector should be documented, tied to a specific statutory or regulatory basis, and subject to the same transparency and review mechanisms described above.

Monitoring for Systemic Exclusion Without Directing Individual Decisions

The Board is right to emphasize that banks retain full discretion to make their own customer decisions. At the same time, the Board should monitor for systemic patterns of exclusion in lawful but historically sensitive sectors. Aggregate, anonymized reporting would allow the Board to detect broad trends without influencing individual institutions' decisions. For example, if a large number of institutions simultaneously exit a lawful sector—such as money services businesses, firearms retailers, or certain political advocacy groups—aggregate data would allow the Board to determine whether this reflects independent business decisions or a systemic chilling effect created by supervisory culture. This approach would help prevent politicized access to financial services while respecting banking autonomy.

Conclusion

The proposed rule is a necessary correction to a supervisory framework that has allowed subjective judgments and political considerations to influence access to financial services. The adjustments described above would strengthen the rule, close potential loopholes, and ensure that the Board's stated intent is carried out in practice. The Board should finalize the rule and incorporate these refinements to ensure it functions as a durable, enforceable safeguard against politicized supervision.

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