Loose Lips Sink Ships

Supplementary Materials

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ASCEND PERFORMANCE MATERIALS
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Credit grantors sometimes seek the personal guarantee of their customer’s principal and his or her spouse. They must contend with certain limits on obtaining a spousal guarantee.

The Equal Credit Opportunity Act (“ECOA”) makes it unlawful for any creditor to discriminate against any credit applicant… on the basis of… sex, marital status… “The ECOA defines an applicant as “any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.” This does not include guarantors.

The Federal Reserve Board (“FRB”) adopted Regulation B to assist in implementing the ECOA. In 1985, the FRB amended Regulation B to expand the definition of an applicant to include guarantors. As a result of this change, a creditor is prohibited from requiring a spouse’s guarantee even where a principal’s personal guarantee is required.1 A creditor that improperly obtains a spousal guarantee is subject to claims for recovery of actual and punitive damages and attorneys’ fees.

A creditor is prohibited from requiring a spouse’s guarantee even where a principal’s personal guarantee is required.

The U.S. Circuit Courts of Appeals are divided over the enforceability of Regulation B’s limits on spousal guarantees. The U.S. Eighth Circuit Court of Appeals, in Hawkins v. Community Bank of Raymore, rejected Regulation B’s limits on spousal guarantees, holding that the ECOA’s definition of an applicant is unambiguous and does not include guarantors. The United States Sixth Circuit Court of Appeals, in RL BB Acquisition, LLC v. Bridgemill Commons Development Group, LLC, et al., upheld Regulation B’s limits on spousal guarantees, holding that the ECOA’s definition of an applicant is ambiguous and could include a guarantee.

On March 22, the Supreme Court of the U.S., in its first 4-4 split decision since the recent death of Associate Justice Antonin Scalia, affirmed the Eighth Circuit’s holding that rejected Regulation B’s limit on, and the applicability of ECOA protections to, spousal guarantors because a guarantor is not an applicant. This holding is binding only on courts in the Eighth Circuit and does not enjoy nationwide enforceability. It will be left for a later Supreme Court, with its full coterie of nine justices, to finally resolve the enforceability of Regulation B’s limits on spousal guarantees.

The Eighth Circuit Case
PHC Development, LLC ("PHC"), a Missouri limited liability company, had two members, Gary Hawkins and Chris Patterson. Community Bank of Raymore ("Community") made four separate loans, totaling more than $2 million, to PHC. Community required Hawkins, Patterson, and their spouses, Valerie Hawkins and Janice Patterson, to execute personal guarantees of each loan in favor of Community. Community demanded payment from PHC and all the guarantors after PHC had failed to make the required loan payments. The spousal guarantors sued Community for damages and a declaration that their guarantees were void and unenforceable under the ECOA. They alleged that Community had violated the ECOA by requiring their guarantees because they were married to Hawkins and Patterson. Community
filed several counterclaims, including claims for recovery on the guarantees.

The Eighth Circuit held that the spousal guarantors were not entitled to the protections of the ECOA and Community did not violate the ECOA by obtaining their guarantees. The ECOA’s text plainly states that a person is not an applicant by executing a guarantee of a third party’s indebtedness. A person applying for credit must request credit. A guarantor does not request credit, by executing a guarantee, but merely promises to pay another person’s debt, or perform another person’s obligations under a contract in the event of default. A guarantor engages in different conduct, receives different benefits and is exposed to different legal consequences than a credit applicant.

The court rejected excluding guarantors as applicants since the ECOA prohibits discrimination with respect to “any aspect of a credit transaction.”

The Eighth Circuit also observed that the ECOA was initially designed to curtail the practice of creditors refusing to grant a wife’s credit application without her husband’s guarantee. The ECOA also prohibits a creditor from denying credit to a female applicant because such stereotypical distractions as child care might render her a credit risk. These policies sought to ensure fair access to credit and preclude the exclusion of borrowers from the credit market based on marital status. These policies should not apply to spousal guarantors who were neither excluded from the lending process nor denied access to credit. In fact, to the contrary, the spousal guarantors claimed that they were being improperly included in the credit process.

The Sixth Circuit Case
H. Bernard Dixon and his wife, Starr Stone Dixon (“Starr”) had executed personal guarantees in favor of BB&T Bank to backstop BB&T’s loans to companies in which Dixon was an investor. Starr had testified that she was pressured to execute her guarantee in favor of BB&T.

A lawsuit was ultimately filed to collect the sums due on the guarantees executed by Bernard and Starr. Starr disputed the enforceability of her guarantee because it was obtained in violation of the ECOA and Regulation B.

The Sixth Circuit upheld Regulation B’s inclusion of guarantors as applicants and concluded that a spousal guarantor could assert ECOA claims as an affirmative defense in a lawsuit to collect on the guarantee. The Sixth Circuit rejected the Eighth Circuit’s narrow interpretation of the ECOA’s definition of an applicant that includes only the initial applicant seeking credit and not guarantors, and deferred to the FRB’s definition of applicant that includes guarantors. The court first noted that ECOA’s definition of an applicant is ambiguous and could encompass guarantors. Likewise, the court rejected excluding guarantors as applicants since the ECOA prohibits discrimination with respect to “any aspect of a credit transaction.”

The Supreme Court’s Ruling
The Supreme Court ultimately granted certiorari to hear the Hawkins case. The court considered two issues: (1) are spousal guarantors considered applicants entitled to ECOA’s protections; and (2) does ECOA grant the FRB the authority to promulgate Regulation B’s inclusion of guarantors as applicants?

Since the late Justice Scalia would have been the deciding vote in this case, his questions and comments made during oral argument and quoted as part of the colloquy below, suggests that he would have rounded out a five-vote majority ruling that a guarantor is not an applicant, and, therefore, is not entitled to the ECOA’s protections and rejecting Regulation B’s inclusion of guarantors as applicants.

“Scalia: Let’s assume that I write a letter of recommendation for some … young woman who is applying to a law school, or to a college. I would really like her to be admitted, and I’ve written a letter of recommendation to sort of put my judgment, my reputation on the line on her behalf. Am I an applicant to the law school?

Duggan [attorney for the spousal guarantors]: No.

Scalia: Would anybody use the English language that way?

Duggan: Well, I believe, in that context, that person is not agreeing to become jointly and separately liable to pay the tuition …

Scalia: What difference does it make? Instead of putting my financial solvency on the line, I put my reputation on the line.

Spousal guarantors are not entitled to ECOA’s protections because they are not applicants and the FRB lacked the power to include spousal guarantors as applicants.

DUGGAN: Well, I think it’s very important, because the [FRB] made a reasonable interpretation under their broad grant of authority that when … they have to come forward and be contractually obligated to repay the applied-for debt, they are an applicant.

Scalia: They are not applying. It’s – … their husband who’s applying, and … it’s a company that’s applying. They don’t have to go in. It’s up to them.

Fletcher: (from the U.S. Solicitor General’s Office, who supported the spousal guarantors’ position): So in our view, there’s no place where reading applicant to include guarantor wouldn’t work or would create a problem. What the [FRB] has
done, when it amended its regulation to include guarantors, is it asked for comments on whether there are specific provisions of the regulation that guarantors should be exempted from. And in response to those comments, it decided to exercise its broad rulemaking authority to exempt them and to not treat them as applicants for purposes of other provisions of the statute…

Creditors seeking a spousal guarantee should continue to follow Regulation B’s requirements or seek alternative security to backstop payment of their claim.

Scalia: Where… does it get that discretion? I mean, it says applicant in the statute. When it says applicant, the [FRB] has discretion to say, oh, yeah, it says applicant, but sometimes we’re going to ignore that.

* * *

Scalia: I assume that that definition of applicant would cover my letter to somebody urging that person to hire somebody else.

McALLISTER (Community’s counsel): I think that’s exactly right. …

Scalia: I would be an applicant under … that definition, which is, of course, absurd.

* * *

Scalia: On … the question of the guarantor entering a contract just as the borrower enters a contract, the two contracts are quite different. The borrower enters a bilateral contract, I promise to pay back the money … with interest if you promise to lend me the money. The guarantor is … asking for a unilateral contract. The guarantor is just saying, I make no promises, but if you lend money to this person that I’m guaranteeing and that person defaults, I’ll make good. That’s … a unilateral contract, which doesn’t bind the … lender at all. It’s if the lender chooses to do that, I’ll stand good … for the default.

The two contracts are quite different. And in that respect, you can’t call … both of them applicants just because they both … have contracts. Of course they both have contracts.”

The Supreme Court’s 4-4 split decision in the Hawkins case affirmed the Eighth Circuit’s holding that spousal guarantors are not entitled to ECOA’s protections because they are not applicants and the FRB lacked the power to include spousal guarantors as applicants. The court’s holding has no precedential value outside of the Eighth Circuit and leaves the issue of the nationwide enforceability of Regulation B’s limits on spousal guarantees for a future Supreme Court, hopefully with a full coterie of nine justices, to decide.

Trade creditors should continue to proceed cautiously when they seek a spouse’s guarantee (at least in courts outside of the Eighth Circuit). Until the Supreme Court finally weighs in on whether a guarantor is an applicant entitled to ECOA’s protections, and on the enforceability of Regulation B’s inclusion of guarantors as applicants, creditors seeking a spousal guarantee should continue to follow Regulation B’s requirements or seek alternative security to backstop payment of their claim.

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1. Regulation B prohibits creditors from “requiring the signature of an applicant’s spouse, … other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor’s standards of creditworthiness for the amount and terms of the credit requested.” See Regulation B, ¶ 202.7(d)(1). There are limited exceptions to Regulation B’s limits on spousal guarantees where (a) the applicant requires unsecured credit and is relying, in part, upon property that applicant and spouse jointly own, and (b) where a married applicant requests unsecured credit and resides in a community property state, or if the property on which the applicant is relying in its credit decision, is located in a community property state. See Regulation B, ¶¶ 202.7(d) (2) and (3).

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IV. Considering the legal ramifications of using Social Media in credit decisioning

Social Media: The New Reality for Credit Professionals

By Mary J. Hildebrand, CIPP/US/EU, Bruce S. Nathan and Cassandra M. Porter

As John Judge, Senior Vice President at ABC Equipment Inc., casually scanned the weekly staff meeting agenda, an item caught his attention. Jane Quick, ABC’s new Director of Credit, had reserved time for “Social Media.” ABC provides supplies and equipment to the restaurant industry throughout the northeastern United States. What could that possibly have to do with Social Media? Curious, he called Quick for a preview.

In her new role, Quick had been investigating some disturbing trends. ABC’s accounts receivable has been steadily aging. Several key customers had either closed or merged with third parties. And, perhaps most disconcerting, a few online upstarts had won business from restaurants located in ABC’s sweet spot by getting access to the restaurant’s management before ABC even knew about the opening. What could they know that ABC didn’t?

According to Quick, ABC could improve collection of its accounts receivable and its market share by tapping into information available through social media. In fact, she intended to propose integrating social media research into ABC’s credit review process from start to finish! Judge expressed reservations - after all, ABC’s activities were subject to certain federal statutes, and social media was uncharted territory. Clearly, they needed more information before forging ahead.

If a similar scenario is playing out in your organization, you are not alone. Social Media offers credit professionals an unprecedented opportunity to access information regarding credit applicants outside the confines of the traditional credit application and other sources of information.

However, current laws intended to protect applicants for trade credit from unlawful practices and discrimination, still apply to the rapidly evolving area of Social Media. Increasingly, the issue confronting credit professionals is not whether to utilize information found on Social Media, but how to manage compliance and legal risks associated with that strategy.

In this initial article on how credit professionals can properly utilize Social Media, the authors explore the impact of Social Media on decisions associated with extending, limiting or terminating credit to business customers.

Setting the Stage: What Exactly is Social Media?

Commentators agree that the popular term “Social Media” encompasses a broad array of online communication platforms. In providing guidance (“Guidance”) to financial institutions regarding the use of Social Media, the Federal Financial Institutions Examination Council (“FFIEC”) offers an apt description:

Social Media is a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video (“Social Media”). Social Media can take many forms, including, but not limited to, (i) micro-blogging sites (e.g., Facebook, Google Plus, Myspace, and Twitter); (ii) forums, blogs, customer review web sites and bulletin boards (e.g., Yelp); (iii) photo and video sites (e.g., Flickr and YouTube); (iv) sites that enable professional networking (e.g., LinkedIn); (v) virtual worlds (e.g., Second Life); and (vi) social games (e.g., FarmVille and CityVille).1

Social Media is dynamic and inherently interactive, creating virtual communities for work and social activities. Individuals, organizations and businesses sponsor websites and participate on Social Media for various purposes, including interaction with current and potential customers, professional networking, or simply staying in touch with friends. Social

Media has the potential to provide real time data on a business applicant and their management, including, for example, today’s post on Yelp, or a Facebook posting announcing the target date for opening a new location. By contrast, traditional sources of information that credit professionals use to assess creditworthiness, such as audited and unaudited financial statements, may already be stale when submitted.

Every community has rules, and Social Media is no exception. Social Media sites typically post terms of use (aka, terms of service) and a privacy policy (the “Policies”) which reflect the rules applicable to profiles, content, and services available through the site. The Policies establish privacy practices governing the collection, use and disclosure of information available on the site. Organizations and individuals that choose to share information using Social Media typically have the right to determine their audience through “privacy settings,” which define the categories of users permitted access to such information. Not surprisingly, available privacy choices vary according to the applicable Policies, the preferences and consents granted by the posting party, and the status of the individual or entity seeking access to such information. For example, Facebook, the popular “micro-blogging” site, allows members to designate certain information as “public,” but restrict access to more private data to individuals accepted as “friends.” LinkedIn, one of the FFIEC’s examples of a professional networking site, also allows members to control who may view their profile information. LinkedIn, like Facebook, considers the status of the viewer, specifically whether the viewer is a member of the LinkedIn community and the type of membership that the member has purchased from LinkedIn. Members of Facebook, LinkedIn and other Social Media sites, however, typically do not have privileges to post or modify the profiles (or “pages”) of other users, particularly personal information such as name, residence, education, employment, age, or gender. In order to override existing content and post new or different profile information, the authorized user’s credentials must be used (e.g., online name, password, and responses to authentication questions).

Social Media users exercise a meaningful degree of control over the content and information on their profiles and pages, and access to such materials by the public, other site members, friends and contacts. Although courts have held that there are no statutory protections for electronic information that is publicly accessible, relying on such information as a factor in extending credit may violate applicable law (see below). Moreover, the Policies also govern visitors to the Social Media site who never join or “friend” anyone. Therefore, even if a credit professional views public information on a Social Media site, use and disclosure of this information may be restricted by both applicable law and the terms in the Policies. Similarly, a Facebook wall post that is configured to be private is, by definition, not accessible to the general public. Accordingly, unauthorized access and use of Social Media information designated by the users as “private,” may violate the ban on fraudulent activity found in most Policies, as well as other applicable law.

Another key aspect of Social Media that credit professionals should consider is the reliability of the content and information accessed. Virtually all Social Media platform providers decline responsibility for verifying user-provided content, as reflected in their Policies. For example, the forum/customer review site Yelp permits registered users to post content and commentary regarding various businesses profiled on the site. However, the user (and not Yelp) is responsible for the reliability and veracity of that content. Yelp, like other Social Media sites, only reserves the right, although it has no obligation, to remove content that violates standards of acceptable use reflected in the Policies. Social Media sites such as Pinterest and LinkedIn, where the breadth and extent of user-created content drives the site’s popularity, also provide that the user is solely liable for “user generated content” that is posted on the site.

While this allocation of responsibility for content is certainly not unique to Social Media forums, the impact of using such information in credit decisions may be significant. The issue is not that the information gleaned from Social Media is inherently unreliable. Rather, informed credit professionals should be aware that Social Media “content creators” owe no duty of loyalty or quality to anyone other than themselves. Accordingly, credit professionals should carefully consider the “weight” given to any information obtained from a Social Media site.

The Policies govern Social Media sites as a matter of contract, but legal authority for cybersecurity practices rests with the Federal Trade Commission (“FTC”). The FTC’s enforcement responsibility includes the evaluation and enforcement of Policies that govern Social Media sites. Section 5 of the Federal Trade Commission (FTC) Act, 15 U.S.C. § 45, prohibits “unfair or deceptive acts or practices in or affecting commerce.” The FTC has vigorously pursued enforcement actions against Social Media sites ranging from the 2012 settlement with Facebook, Inc. (where the company agreed to submit to an independent biennial privacy audit until 2032) to the 2014 settlement with Snapchat (where the company agreed to a similar biennial 20-year audit/review period of its privacy policies).

Activities on Social Media are governed by the Policies, and through the FTC. For the most part, laws applicable to credit decisions were enacted long before Social Media became a reality. Nonetheless, these laws remain critical to the process.

**Relevant Federal Laws & Regulations**

There are several federal statutes that govern trade credit decision making. This article focuses on two laws integral to trade credit practices in business-to-business transactions, the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.

Monmouth-Ocean Hospital Service Corp., 961 F. Supp. 2d 659, 666 (D.N.J. 2013) (citing Konop v. Hawaiian Airlines, Inc., 302 F.3d 868, 874 (9th Cir. 2002)).

Recently the District Court of New Jersey reviewed this issue in the context of a wrongful termination of employment matter, Ehling v.
an individual’s credit information to make credit decisions in

The FCRA regulates the use of consumer credit reports and
to deny credit comes from Social Media or other sources.

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otherwise limited, the credit professional must provide a
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credit applicant.

The ECOA is not well advised to
take ECOA into consideration when contemplating use of
Social Media.

If a creditor, for example, treats an applicant (or a potential applicant) unfavorably based on one of the ECOA Factors, ECOA may be implicated. In particular, a creditor may not request information related to the ECOA Factors, and/ or refuse to extend credit based upon one of the ECOA Factors. Commentators have gone so far as to suggest that credit professionals avoid engaging in “small talk” to avoid eliciting information covered by the ECOA Factors. Moreover, violations of ECOA do not require mal intent by the creditor; only that creditor’s act(s) created a “disparate impact” on
credit applicants. Under the “effects test,” a creditor can violate the ECOA even when it applies the same standards
to all applicants, but the standard violates the ECOA. Credit professionals perusing Social Media for information regarding credit applicants may easily determine that one or more of the ECOA Factors are present. Accordingly, the potential risk of violating ECOA is increased if, and to the extent, such
information is considered when making a decision about a
credit applicant.

Under ECOA, if trade credit is denied, terminated or otherwise limited, the credit professional must provide a
notice of the adverse action and applicant’s right to request
the reasons for the adverse action. The ECOA also provides
that, upon applicant’s timely request, the creditor must provide specific reasons for its decision to take adverse
action. This requirement applies whether the information used
to deny credit comes from Social Media or other sources.

The FCRA regulates the use of consumer credit reports and an individual’s credit information to make credit decisions in

4 Under the ECOA, the term “applicant” means “any person who requests or received an extension of credit from a creditor” including a person
who may become “contractually liable regarding an extension of credit.” 12 C.F.R. § 1002.2(e). A “creditor” is defined under the ECOA as someone
who “regularly participates in a credit decision, including setting the terms of the credit.” Id. at § 1002.2(l).


business transactions. The FCRA applies to all written, oral,
and other communications of information by a consumer-
reporting agency (“CRAs”) that may bear on a consumer’s creditworthiness, standing or capacity, character, general reputation, personal characteristics, or mode of living. The
FCRA requires that a creditor provide notice to an applicant
if it is denying credit or taking any other adverse action
with respect to an extension of trade credit based upon
the information obtained in a consumer credit report.6 The
FCRA also requires that a creditor disclose a credit score on
which the creditor relied in taking an adverse action where
the credit score is based in whole or in part on information in
a consumer credit report. That includes all of the key factors
that adversely affected the credit score, the date the credit
score was created and the name of the person or entity
that provided the credit score. The FCRA also requires that
a creditor seeking a credit report on a business entity’s
principal, who is not otherwise liable to the creditor, obtain
the principal’s consent. The FCRA does not apply to the use
of business credit reports.7

In 2012, the FTC filed a suit against Spokeo, Inc., a Social Media data collector marketing profiles to human resource
and recruiting departments. In its suit, the FTC alleges
that Spokeo failed to adhere to the provisions of the Fair
Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA")
when collecting data and passing it on to purchasers.
Spokeo and the FTC settled the action through a consent
decree wherein Spokeo agreed, among other relief, to (i)
pay a civil penalty of $800,000, (ii) comply with the FCRA,
including providing “User Notices”, (iii) submit annual
“compliance reports” for the next 20 years, and (iv) maintain
records necessary to demonstrate its compliance with the
settlement.

For ordinary extensions of trade credit, ECOA and
FCRA seem clear enough – no discrimination, adequate
notice of an adverse action, disclosure and consent to
access a credit report on an individual, all within statutory
timeframes. In Social Media, however, the guidelines begin
to blur. Suppose, for example, ABC routinely drives by
restaurant locations to verify the address, the condition of
the premises, or the crowds on a Saturday. Is this action
materially different from checking the restaurant’s Facebook
page for pictures and other content to verify information
provided on a credit application? Would it matter if, rather
than verifying information, the credit professional intended
to supplement a credit application by checking the latest
Yelp reviews?

Verification would appear to be the conservative route,
but strict policies are required to ensure that additional
information readily available on Facebook (such as ECOA
Factors) does not influence the credit decision. Yelp reviews
are a gray area, not only because their veracity cannot be verified, but also due to the same unavoidable disclosure of
ECOA Factors that cannot otherwise be considered.

Alternatively, relying on a publicly available Facebook page


7 See FTC Advisory Opinion to Tatelbaum (07-26-00), www.ftc.gov/policy/advisory-opinions/advisory-opinion-tatelbaum-07-26-00.
of an existing or potential new customer or its management to learn about a possible need for the expansion of credit is likely permissible.

Information subject to restricted access on Social Media is by its nature more problematic. On Facebook and LinkedIn, members of the site may view content not available to the general public, with the next level of access reserved for friends and contacts. At each step, credit professionals must ensure that (i) they do not violate the respective Social Media sites’ Policies by their access, and (ii) their use of this information does not violate applicable law (e.g., ECOA and FCRA). Although a credit professional may have sufficient privileges on a Social Media site to view data and/or information, this does not mean that the data is necessarily available to the public (and/or that prior consent is not necessary from the applicant). Therefore, while utilizing Social Media information will likely provide a credit professional with additional information, the right to use such information will remain subject to the consent of the individual or organization. Moreover, even with consent, a credit professional may not circumvent the anti-discrimination and disclosure requirements of these statutes.

Of late, certain trade creditors extending business-to-business credit are requiring access to a wider array of information that may include information related to an applicant’s officers and directors, accounts with seller sites such as Amazon and e-Bay, and other sources that contribute to the so-called “Social Media Score.”8 However, given the FTC’s stance on companies (like Spokeo, Inc.) that collect data similar to that of a CRA, along with ECOA’s restrictions on data considered, steps to collect and utilize Social Media data similar to that of a CRA, along with ECOA’s restrictions and FTC’s stance on companies (like Spokeo, Inc.) that collect data similar to that of a CRA, along with ECOA’s restrictions on data considered, steps to collect and utilize Social Media information should be carefully deliberated.

Recommendations: A Useful Tool, Yes, But Use of Social Media Must Be Carefully Managed

Social Media is here to stay. Its terms have become a key part of our everyday lexicon. Although considered mainstream, this does not mean that credit professionals’ use of Social Media in their credit decisions without further steps, is appropriate.

In order to realize the benefits of Social Media while mitigating risk, top management must make an informed decision to permit access to Social Media and implement appropriate policies, training and oversight to ensure that applicable laws are honored.

• Strategy

A company’s use of data gathered through Social Media must be considered by its highest levels of management. In the instance of ABC, Quick and Judge are off to an excellent start. By adding the topic to an upcoming meeting, Quick is raising these issues with management.

Companies should institute procedures and protocols to properly implement the Social Media Policy including, as applicable, protocols to ensure compliance with the Policies for specific Social Media sites. In the example of ABC, Quick (or another senior team member) should be charged with this responsibility and, as necessary, with authority to create a Social Media Policy team to ensure appropriate input by all stakeholders including compliance, legal, and representatives from the Board.

• Risk Management Process

The Social Media Policy should be subject to periodic review by an internal but independent company resource (e.g., the compliance department). In our example, ABC’s internal review should measure the effectiveness of the Social Media Policy in addressing ABC’s business concerns that led to adoption of the Social Media Policy (namely, collection issues, market share, and the paucity of current information available to the credit department compared to ABC’s competitors). As determined by Quick and the reviewing parties, these results may be shared with key members of ABC’s management and credit department to improve implementation and perhaps propose changes to the Social Media Policy.

In addition to more frequent internal reviews, a company’s annual audit and compliance function should be updated to include the Social Media Policy. As with many other functions, companies should consider

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