

December 2, 2025

Adam Cohen
Deputy Comptroller and Chief Counsel
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Docket ID: OCC-2025-0174

**Re: Comment on Joint Notice of Proposed Rulemaking - Unsafe or Unsound Practices,
Matters Requiring Attention (OCC Bulletin 2025-29)**

Dear Mr. Cohen:

Axos Bank appreciates the opportunity to comment on the proposed rule and provide the OCC with its perspective. Axos has operated as a digital bank for over 20 years and serves communities and customers nationwide. The Bank writes to express strong support for the proposed rule defining "unsafe or unsound practice" under Section 8 of the Federal Deposit Insurance Act and establishing uniform standards for Matters Requiring Attention (MRAs). This proposal represents a significant and necessary improvement to the bank supervisory framework that will enhance both financial stability and operational effectiveness.

Critical Benefits of the Proposed Rule

1. Establishing Clear, Risk-Based Standards

The absence of a statutory definition of the phrase "unsafe or unsound practice" has created uncertainty and inconsistency in supervisory examinations for decades. By codifying a definition focused on material financial harm, the proposal provides much-needed clarity that will:

- Enable bank management and boards to better assess and prioritize risks
- Allow more effective allocation of resources to address truly material issues
- Facilitate communication between institutions and examiners
- Reduce subjectivity in the examination process

The requirement that practices must be "likely to materially harm the financial condition of the institution or present a material risk of loss to the DIF" appropriately focuses supervisory attention on issues that genuinely threaten safety and soundness. Thus, internal Agency guidance must emphasize the required, pre-requisite determination of these specific harms and the preponderance of evidence standard of proof for establishing that such harms occurred.

2. Improving Risk Management Focus

From a risk management perspective, the current examination framework too often emphasizes process compliance over substantive risk assessment. Examiners have at times issued MRAs for procedural matters or documentation deficiencies that bear little relationship to the institution's actual risk profile or financial condition, thereby risking that one or more of the following may occur:

- **Resource Misallocation:** Institutions may spend significant time and expense addressing minor procedural issues while more material risks receive insufficient attention
- **Risk Assessment Distortion:** Management attention becomes diverted from strategic risk management to satisfying process-oriented examination findings
- **Compromised Board Effectiveness:** Board risk committees spend valuable meeting time on immaterial matters rather than substantive risk oversight

The proposed rule's emphasis on "material harm" and "material risk of loss" will refocus both examiner and institution attention on what truly matters for safety and soundness.

3. Enhancing the MRA Framework

The establishment of uniform standards for MRA issuance is particularly important. Under current practice, different examination teams may apply vastly different thresholds for what merits an MRA, creating inconsistency across institutions and examination cycles. The proposed standard requiring that a practice "could reasonably be expected to materially harm the financial condition of the institution" provides appropriate forward-looking risk identification while maintaining a meaningful threshold.

Critically, the proposed rule would prevent the common practice of using MRAs as a pathway to enforcement actions without independently and provably establishing that unsafe or unsound practices in fact occurred. The proposed rule appropriately preserves the MRA as a supervisory tool for early intervention on material issues rather than an indirect enforcement mechanism for immaterial concerns.

4. Tailoring to Institution Characteristics

The explicit tailoring provision is essential and reflects supervisory best practices. What constitutes "material harm" for a large, complex institution differs substantially from that which would establish "material harm" for a mid-size or community bank. The requirement to consider "capital structure, riskiness, complexity, activities, asset size and any financial risk-related factor" ensures proportionate supervision. As CRO of Axos, I can attest that applying a one-size-fits-all approach to materiality assessments has been a persistent problem in examinations. The codification of tailoring requirements will improve supervisory effectiveness.

5. Linking Ratings to Material Financial Impact

The agencies' expectation that composite rating downgrades to less-than-satisfactory would occur only when MRAs meeting the proposed standard are issued (or enforcement actions are properly taken) is a critical reform. Currently, rating downgrades can result from accumulated minor findings that individually and collectively may not present material financial risk.

Rating downgrades have significant consequences for institutions, including impacts on growth, M&A activity, regulatory reporting requirements, and market perception. Ensuring such consequences flow only from material financial concerns, not non-material procedural shortcomings, appropriately aligns supervisory outcomes with safety and soundness objectives.

Addressing Potential Concerns

Axos encourages the Agencies to dismiss any concerns that the proposed rule would limit supervisory effectiveness or delay action on emerging risks. Axos respectfully disagrees with any such position because the proposal:

- **Does Not Eliminate Early Intervention:** The MRA standard uses "could reasonably be expected to" rather than "likely," providing examiners flexibility to address material issues before they appear in financial metrics
- **Preserves Legal Compliance Focus:** The rule explicitly includes violations of banking laws and regulations as grounds for MRAs, ensuring institutions remain accountable for legal compliance
- **Maintains Safety and Soundness Authority:** The agencies retain full authority under Section 8 to address financial risks; the rule simply requires those risks to be material

The proposal appropriately distinguishes between supervisory guidance and enforceable requirements, focusing formal supervisory action on matters that genuinely threaten institutional safety and soundness or legal compliance.

Concern Regarding "If Continued" Language

One area requiring additional clarity concerns the "if continued" language in the proposed definition of unsafe or unsound practice. While this forward-looking element is appropriate for identifying emerging risks, without sufficient guardrails it could serve as a pretext for examiners to pressure institutions to exit lawful business lines that examiners view unfavorably, even when current operations present no material financial risk.

For example, an examiner could theoretically argue that a profitable, well-managed business line poses material risk "if continued" based on hypothetical future scenarios or supervisory preferences regarding industry exposure, rather than objective evidence of likely material harm. This could effectively allow subjective examiner judgment about business strategy to override management discretion on legitimate business decisions.

To address this concern, Axos recommends the Agencies clarify in the final rule or accompanying guidance that:

1. **"If continued" assessments must be based on objective evidence** of likely material harm under current or reasonably foreseeable conditions, not speculative scenarios or supervisory preferences about particular industries or business models
2. **The threshold requires reasonable probability**, not mere possibility, that continuation would cause material harm—consistent with the preamble's explanation that "likely" means more than merely possible
3. **Institutions retain discretion** to operate lawful business lines unless examiners can demonstrate clear, evidence-based material financial risks specific to that institution's operation of the business
4. **Exit demands require independent justification** showing that management's proposed risk mitigation measures would be insufficient to address the identified material risk

Without such clarification, the "if continued" language could inadvertently preserve the very supervisory overreach the proposed rule seeks to remedy.

Recommendations for Implementation

To maximize the effectiveness of the final rule, Axos recommends the agencies:

1. **Provide Clear Guidance on Materiality:** Axos appreciates the principle-based approach. Nevertheless, supplemental guidance or examples illustrating how materiality should be assessed across different institution sizes and risk profiles would be helpful
2. **Ensure Examiner Training:** Given the significant change this represents, comprehensive training for examination staff will be critical to consistent implementation
3. **Establish Clear Appeal Processes:** Institutions should be afforded clear procedures to challenge examination findings that do not meet the proposed standards
4. **Monitor Implementation Consistency:** The agencies should track implementation to ensure the rule achieves its intended purpose of focusing on material financial risks
5. **Clarify "Generally Accepted Standards of Prudent Operation":** Additional guidance on how examiners should apply these standards, particularly for emerging risks or novel activities, would promote regulatory consistency as intended by the proposed rule

Conclusion

This proposed rule represents the most significant and beneficial reform to bank supervision standards in many years. By focusing supervisory resources on material financial risks and legal compliance, the rule will enhance both financial stability and institutional effectiveness. Banks will be better positioned to identify and manage truly material risks, while examiners can focus their expertise on issues that genuinely matter for safety and soundness. The codification of these standards in regulation—rather than guidance—appropriately provides durability and legal clarity to these important reforms. I strongly urge the agencies to finalize this rule expeditiously.

Thank you for the opportunity to comment on this important proposal. Please do not hesitate to contact me if you have questions or would like to discuss these comments further.

Very truly yours,

A solid black rectangular box used to redact the signature of John C. Tolla.

John C. Tolla,
Executive Vice President
Chief Risk Officer