December 29, 2025

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Jennifer M. Jones
Deputy Executive Secretary
Attn: Comments—RIN 3064-AG12
Federal Deposit Insurance Corporation
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Re: Prohibition on Use of Reputation Risk by Regulators; Office of the Comptroller of the Currency RIN 1557-AF34, Docket ID OCC-2025-0142; Federal Deposit Insurance Corporation RIN 3064-AG12; 90 Fed. Reg. 48825 (Oct. 30, 2025)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the proposal from the Office of the Comptroller of the Currency's and the Federal Deposit Insurance Corporation ("OCC" and "FDIC", respectively; collectively, "the Agencies") to codify the removal of reputation risk as a basis for supervisory criticisms ("Proposal").[2]

As with other proposals from the OCC and FDIC, the Proposal is a clear result of industry lobbying that puts the industry's interests above the public interest. The Agencies use a very narrow view of reputation risk as pretext to propose to eliminate the reputation risk category as a basis for supervisory criticisms and fail to support this narrow view with even anecdotal evidence. Reputation risk is a higher-level risk category than is laid out by the Agencies in the Proposal and is a critical risk for bank management to consider along with – and in many cases, intimately related to – the other major risk categories. Contrary to the unsubstantiated claims in the Proposal,

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Prohibition on Use of Reputation Risk by Regulators; Office of the Comptroller of the Currency RIN 1557-AF34, Docket ID OCC-2025-0142; Federal Deposit Insurance Corporation RIN 3064-AG12; 90 Fed. Reg. 48825 (Oct. 30, 2025), https://www.federalregister.gov/documents/2025/10/30/2025-19715/prohibition-on-use-of-reputation-risk-by-regulators.

reputation risk (per its true definition and not the definition considered in the Proposal) indeed has been a material contributor to banks becoming unsafe and unsound and even to bank failures.

As seen many times throughout history, including during the bank turmoil of Spring 2023, reputation risk has been an important factor to maintaining safety and soundness. Banks have a long history of dangerously poor management, not operating safely or in compliance with rules and laws, as well as outrageous unethical behavior, as Better Markets has detailed in multiple "Rap Sheet" reports over the years.[3] That is why banks have been required to look beyond strictly financial matters to determine if there are unacceptable risks arising from reputation and other non-financial facts and circumstances. Unethical and risky activities that do not directly affect a bank's bottom line can and do lead to significant losses, bank failures, taxpayer-funded bailouts, and economic instability.

Better Markets strongly urges the Agencies to rescind the Proposal and keep reputation risk as part of the supervisory process. Short of that, at the very least the Agencies should provide a thoughtful consideration of the current supervisory framework around reputation risk and a sensible path forward that addresses the Agencies' concerns while maintaining their historically well-established support for the consideration of reputation risk.

COMMENTS

I. THE PROPOSAL INCORRECTLY TAKES A NARROW VIEW OF REPUTATION RISK.

The Proposal incorrectly and deceptively uses a very narrow view of reputation risk to justify the proposed removal of reputation risk from the supervisory framework. Specifically, based on the arguments put forth in the Proposal, the Agencies implicitly limit the view of reputation risk in the context of supervision to include only instances in which banks engage with specific counterparties or in specific activities and imply that is the only manner in which the Agencies have been considering reputation risk. While this view is a part of reputation risk, a true assessment of reputation risk also more importantly includes a holistic view of banks' activities across their relationships and activities and an assessment of how such relationships and activities individual or in combination could result in a deterioration in public confidence. That is, the assessment of reputation risk includes the consideration of the entirety of a bank's relationships and activities and how harmful relationships and activities might in totality affect the safety and soundness of the bank. And this assessment is not limited to specific points in time. In fact, the assessment of reputation risk should consider a deterioration in public confidence over time, as occurred with Credit Suisse.

Additionally, the Agencies limit the view of reputation risk as something that can be captured through the assessment of other risk categories – "most activities that could negatively impact an institution's reputation do so through traditional risk channels (e.g., credit risk, market risk, and operational risk, among others)." This simply is not the case. While reputation risk might

[3] *See, e.g.,* Better Markets (October 12, 2023), "Wall Street's Ongoing Crime Spree," https://bettermarkets.org/wp-content/uploads/2023/10/BetterMarkets_Wall_Street_RAP_Sheet_Report_10-2023.pdf.

lead to issues with other risk factors such as capital and liquidity, reputation risks can be and often are entirely exogenous of those other risk categories, such as poor underwriting practices or mistreatment of customers that become public. A key part of effective supervision is identifying the underlying causes of risks and addressing those causes well before they materialize into serious issues. That is why identifying reputation risk as distinct from other risks is so important – reputation risk can start as something exogenous to other risk factors but ultimately lead to those other risk factors.

Furthermore, the relationship between other risks and reputation risk exists the other way around as well – i.e., liquidity or capital risks can turn into reputation risks. When this occurs, there can be – and have been – catastrophic consequences such as bank runs. Silicon Valley Bank is an important example of this dynamic. Its weak capital position relative to its unrealized losses created a massive reputation risk to the point depositors completely lost confidence in the bank's ability to manage itself. This then led to a run by the bank's depositors, creating a liquidity risk from which the bank was unable to recover, ultimately resulting in its failure. This loss of confidence spread to other banks that either failed or came under severe financial distress, creating systemic risk that lasted until the Federal Reserve put in place a special facility to provide banks with unlimited liquidity.

Finally, the Agencies imply that reputation risk must be measurable in order to be considered a valid risk category and state that it is not measurable. On the contrary, the consequence of material reputation risk is perfectly measurable and is bank failure. The buildup of reputation risk does not have to be measured to be considered. That is, the primary point of including reputation risk in the supervisory process is to ensure that banks are seriously considering possible avenues for reputation risk, not just for individual relationships or activities but also holistically across the entire bank. The risk does not need to be measured to be considered and mitigated by bank management. It is the process of consideration of the causes or reputation risk – either discrete or in combination – that is important to identifying and mitigating the risk.

II. <u>REPUTATION RISK IS FUNDAMENTAL BECAUSE IT AFFECTS PUBLIC PERCEPTION, INCLUDING FROM FINANCIAL MARKETS.</u>

The foundation of safe and sound banking is the confidence earned by banks from their counterparties, which includes both customers and funding sources (i.e., both the asset and liability sides). And foundational to confidence is reputation. That is why reputation risk is so important and must be included as a key, standalone risk in the supervisory process.

A deterioration in reputation and loss of confidence can come from many different places both individually and in combination and can occur through discrete instances or over time. Credit Suisse learned this lesson the hard way as its reputation deteriorated over years, ultimately causing a liquidity crisis and insolvency. The bank was very poorly managed and had multiple public management failures including major losses from poor due diligence such as with Archegos Capital Management and Greensill Capital; scandals such as money laundering for criminal organizations as well as dealing with other lawbreaking customers; and identified serious deficiencies in its risk management processes.

The Agencies seem to argue in the Proposal that something like the failure of Credit Suisse could have been captured ignoring reputation risk and only through standard management of liquidity risks, which is ultimately what caused the failure. However, it is the reputation risk that triggered the liquidity risk of depositor runs as depositors eventually lost confidence from the long series of management failures. The same reputation risk/loss in confidence dynamic as occurred with Silicon Valley Bank, where not only did the bank's poor management of its securities portfolio become apparent but also multiple other issues with its management, such as the bank's high concentration among its client base. That is, reputation risk is not simply the discrete risk of a single action or activity or a single set of risks. Rather, it often is a combination of apparent risks that leads to the type of catastrophic reputation risk that occurred with Credit Suisse and Silicon Valley Bank. That is why reputation risk must not be ignored and must be considered on its own and in conjunction with other key risk categories.

III. REMOVING REPUTATION RISK ENABLES MORE BANK ENGAGEMENT WITH LAWBREAKERS AND INTERNAL UNETHICAL OR LAWBREAKING ACTIVITIES.

Even though reputation risk has been a part of the supervisory framework, banks nonetheless have a history of poor management that affects their reputations, not operating safely or in compliance with rules and laws, as well as outrageous unethical behavior. That is why banks have been required to look beyond strictly financial matters to determine if there are unacceptable risks arising from reputation and other non-financial facts and circumstances. Unethical and risky activities that do not directly affect a bank's bottom line can and do lead to significant losses, bank failures, taxpayer-funded bailouts, and economic instability.

First, banks have engaged with lawbreakers without appropriate due diligence, which brings into question their entire risk management and underwriting processes. As recent examples that have been made public, banks were providing large-scale services to Jeffrey Epstein and the crypto criminals Changpeng Zhao and Sam Bankman-Fried. In fact, in November 2023, a New York federal court approved a $290 million settlement resolving claims by survivors of Jeffrey Epstein's sex-trafficking operation that JP Morgan improperly kept him as a client despite warning signs.

Second, banks have engaged in their own lawbreaking activities, as Better Markets has detailed for many years through its "Rap Sheet" summaries of lawbreaking by the country's largest banks. For example, in January 2024, the U.S. Attorney's Office for the Southern District of New York announced that Morgan Stanley had entered into a non-prosecution agreement and agreed to pay $153 million to resolve its role in a criminal scheme perpetrated by one of the banks former employees, Pawan Passi, in which information about upcoming block trades was shared with favored investors who traded ahead of those transactions.

Engagement with such clients and in such activities is exactly why there are supervisory expectations that banks consider their reputation risk when assessing the overall risk profile of clients and activities.

IV. THE AGENCIES FAIL TO PROVIDE SUPPORT FOR ASSERTIONS MADE IN THE PROPOSAL.

The Agencies make the following assertions, among others, in the Proposal without support:

"…most activities that could negatively impact an institution's reputation do so through traditional risk channels (e.g., credit risk, market risk, and operational risk, among others) on which supervisors already focus and already have sufficient authority to address."

"[Reputation risk] also diverts bank and agency resources from more salient risks without adding material value from a safety and soundness perspective."

"The agencies' supervisory experience has shown that the use of reputation risk in the supervisory process does not increase the safety and soundness of supervised institutions…"

"Without clear standards, the agencies' supervision for reputation risk has been inconsistent and has at times reflected individual perspectives rather than data-driven conclusions."

These assertions must be supported with evidence to be valid justifications for the proposed actions. Without supporting evidence, these assertions are nothing but alleged statements that fail to meet the standards necessary for supporting actions proposed through the public comment process.

CONCLUSION

Better Markets urges the Agencies to rescind the Proposal. We hope these comments are helpful.

Sincerely,

[redacted]

Phillip Basil
Director of Economic Growth and Financial Stability

Better Markets, Inc.
[redacted]
http://www.bettermarkets.org