Can Monitoring Social Media Promote Mortgage Banking Compliance and Customer Relationship Management?

BY ANDREA NEGRONI

Andrea Negroni

Meaningful monitoring can help protect brand identity, identify employees adept at driving business through social messaging, and even support regulatory compliance.

In the early days of social media, lenders used platforms such as Facebook, Twitter, and LinkedIn casually, as a communications and PR experiment rather than as a commitment to reach new consumers in a new way. That changed in December 2013, when the Federal Financial Institutions Examination Council (FFIEC) adopted a much-publicized social media policy statement, urging financial institutions to monitor social media in an attempt to manage its risks. Unfortunately, the FFIEC's statement does not explain how institutions should conduct this monitoring, how much monitoring is enough, or what lenders should do with the resulting infor-mation.

For now, there are no clear "rules of the road" for use of social media by mortgage lenders or for monitoring that use. For the most part, the industry is feeling its way in the dark. Still, there are glimmers of light to guide the way, and until more robust rules emerge, lenders would do well to identify and observe the rules that exist. Among these are the Consumer Financial Protection Bureau's (CFPB) admonition on "unfair and deceptive" advertising and marketing of consumer loans, and state laws requiring licensed mortgage bankers to retain and respond to consumer complaints about regulated activity. Most state laws also mandate recordkeeping by mortgage companies, and texts and social messages promoting mortgage transactions are among the records regulatory agencies are asking to review.

The purpose of social media monitoring as envisioned by the FFIEC is to permit lenders to analyze the content they and their loan officers place on social platforms. Meaningful monitoring can help protect brand identity, identify employees adept at driving business through social messaging, and even support regulatory compliance. At present, the greatest risks of unmonitored social messaging may be unfair and deceptive (or false and misleading) advertising, and noncompliance with recordkeeping rules. If left unmanaged, these risks could undermine social media's potentially huge benefits to the mortgage industry.

Consider some examples: Let's say a lender has geographically-dispersed loan originators in branches around the country. If half of them generate loan applications through social media, comparing their origi-▷

nation volume with that of their less connected counterparts may reveal whether social media generates more applications than traditional origination methods, like face-to-face meetings and phone calls. Or, the quality of loans may be evaluated by origination channel, helping the lender determine if social media provides "bang for the buck" vis-a-vis al-ternative channels.

Monitoring could also reveal which social media apps work best in different parts of the lending territory. For example, if Texas loan originators (LO) message with customers primarily via Twitter and Florida LOs communicate mostly on LinkedIn, comparing the officers' performance could help the lender refine its social media strategy.

If most of the company's loan originators use social media, but marketing success is concentrated among a few, monitoring the messages of the influential LOs would identify the most relevant, productive content. "Influential posters" might be good candidates for providing social media training to other LOs or for advising management on effective social strategies.

On the customer relationship management front, monitoring could help a lender analyze how LOs deal with problems, criticisms, or complaints on social platforms. If more consumers gripe on Yelp about New Jersey loan officers than their New Hampshire counterparts, for example, a lender could focus training and target customer service improvement efforts on those with high-dissatisfaction social feedback. Moreover, as state licensing laws often require lenders to keep copies of complaints, monitoring social media may uncover both the sources and substance of underlying complaints.

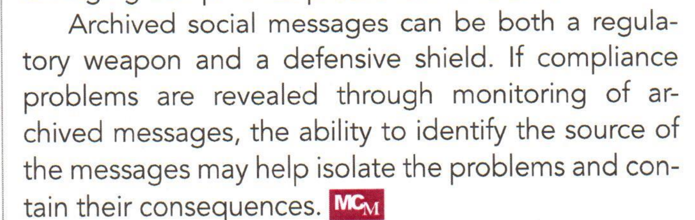
Mortgage lenders' enterprise-wide compliance efforts might also benefit from social media moni-toring. Searching and analyzing keywords like "worst bank" or "predatory rates" (or other negative buzzwords) within social messages could help a lender anticipate regulatory scrutiny while simultaneously pinpointing the source(s) of the problem. If noncomplying messages (e.g., post-ing loan rates without corresponding APRs) can be associated with individual LOs, a lender could target remediation or training to the offenders. Where advertising rules prohibit specific types of messages or words (unqualified superlatives, for example, or claims of government agency approval or endorsement), a lender could identify violations and violators.

Applying the Federal Trade Commission's (FTC) substantiated claims policy to a lender's social media advertising should limit most unqualified claims, such as "lowest rates in the state" or "guaranteed best deal," because these claims can't be substantiated by the lender, so may be considered false and misleading. Since 2013, the FTC has been cracking down on unsubstanti-ated claims in the advertising of various industries, imposing consent orders and money penalties. Monitoring social media may uncover unqualified statements, enabling a lender to remove them, reducing the risk of unsubstantiated claims violations. By the same token, monitoring can prove whether required disclosures, such as the mandatory "Illinois Residential Mortgage Licensee" tagline for Illinois lenders, is incorporated into social messages.

Social media monitoring can also promote fraud detection. Intentional misrepresentations can flourish on social platforms. Undisclosed compensation for positive social posts is an unlawful, but not uncommon, misrepresentation. (See the FTC's Endorsement Guide.) If a loan officer tries to improve his reputation by paying for secret positive posts, the lender's monitoring program might detect and flag unusual upticks in the volume of positive customer comments, un-veiling endorsement "violators."

As social media gains ground in the home mortgage space and the volume of messages increases, lenders should consider archiving and proactively analyzing content posted by individ-ual employees. (Vendors like Smarsh, Hanzo Archives and Ken offer archiving solutions.) The results may lead to redeployment of people and/or resources, and help nip emerging compli-ance problems in the bud.

Archived social messages can be both a regulatory weapon and a defensive shield. If compliance problems are revealed through monitoring of archived messages, the ability to identify the source of the messages may help isolate the problems and contain their consequences. MCM



Andrea "Lee" Negroni is a nationally known legal expert on residential mortgage banking and author of several books on regulation of the home mortgage lending industry. She can be reached at: negroni@american.edu.