

Fact or Fiction: Considerations for Financial Institutions When Verifying (or Debunking) Negative News

Negative news does not always arrive as a front-page exposé. Sometimes it is an investor question, a customer complaint, an employee grievance, a website post, or a report that seems to raise more questions than it answers. And sometimes it is the full-blown public hit piece, with detailed allegations that immediately demand attention. Whatever form it takes, when financial institutions are confronted with these scenarios the basic concerns are often the same: is there something here that needs to be run to ground, responded to, or remediated? And by extension, are there compliance, legal, and regulatory risks that need to be addressed?

For a financial institution, senior executive, or investor those concerns can arise from negative information concerning the institution itself, a target, a business partner, an employee, or another entity whose conduct matters to the business. The information may ultimately prove accurate, inaccurate, exaggerated, or as is often the case - somewhere in between. But when it raises a genuine concern that it could impact the business, simply ignoring it is rarely a satisfactory answer. The issue should be investigated with the objective of verifying or debunking what has been alleged.

Conducting the investigation thoughtfully, under privilege, and with properly sequenced workflows can make all the difference. And for highly regulated financial institutions, proceeding with a dedicated approach signals to regulators, investors, and other stakeholders that the issue is being fully reviewed. Facts discovered may have commercial and legal implications, and they may affect contemplated transactions or other business decisions.

NEGATIVE NEWS COMES IN ALL SHAPES AND SIZES

While both the source of the information and its form are helpful context, neither should necessarily dictate the seriousness with which the matter is treated or where the investigation leads. What matters is whether the allegations create a genuine concern about something that could have a negative impact and therefore needs to be better understood?

The threshold question should be practical: is there enough here that we need to know whether the allegations are true, and relatedly what risk or harm do they create? The next step is to figure out how to make that determination with an eye toward the immediate concerns as well as the legal, regulatory, and business consequences that may follow.

HOW MANY ROCKS TO KICK OVER?

As with transactional diligence, there is no one-size-fits-all answer to how wide or deep an investigation should go; the exercise requires judgment. That means determining what needs to be investigated, how far the investigation should extend, and who should run point. It also means

thinking about how to conduct the investigation sensitively, particularly where unnecessary disruption to an ongoing business, a transaction, a target entity, or an individual could itself create problems.

The role of counsel in that process is not simply to respond to a legal question once the facts have been established. Working alongside the business as the facts are developed can help determine the areas to explore, the sources to be tested, and when the information has reached a critical point of being sufficiently reliable to support necessary decisions. The goal is not an investigation for investigation's sake. Rather, it is to develop the most verified version of events possible under the circumstances so that the client can make an informed decision about next steps.

This reflects the same basic judgment underlying effective diligence more generally: look across multiple sources, corroborate where possible, determine how far to push, where to focus, and how to obtain the information needed, all without allowing the process itself to become a distraction or counterproductive.

WHEN PERCEPTION BECOMES REALITY

There is another complication. Even while you may be trying to determine what actually happened, others may already be forming their own conclusions.

Customers, counterparties, employees, regulators, or others who encounter negative information may not undertake their own investigation. And they may not distinguish between an assertion and an established fact. The mere existence of negative information may affect how they view the company, transaction, person, or issue. In that sense, sometimes perception is reality.

Businesses, especially financial institutions, need to be ready to address this dynamic, even when they have not yet completed the process of running the concerns to ground. That creates an uncomfortable but common tension: the company wants to investigate the underlying problem thoroughly, but it may also need to address public, private, or regulatory stakeholders before it has all of the facts.

The answer is not to presume unverified facts are true, nor pretend the investigation is complete when it may still be pending. Rather, the company needs to balance what it knows at each juncture while making clear that the issue is being taken seriously and investigated in the most prudent manner possible.

THE TAKEAWAY

Negative news can start small or arrive fully formed. It can concern the business itself, or someone whose conduct or reputation matters to it. And it can create consequences before anyone has established whether the underlying allegations are ultimately true or false.

The key is to recognize when something genuinely needs to be reviewed and then approach that exercise with judgment and work toward the most verified version of events in the most efficient manner possible.

For significant matters, outside counsel can be an important part of that process from the outset, helping businesses - especially regulated and complex financial institutions - move from allegations to verified facts, from scrambling to an informed strategy, and from uncertain risk to understanding the commercial, legal, and regulatory consequences along the way.

And institutions should remember that no investigation occurs in a vacuum. While the facts are being developed, the market itself may already be reacting. Being prepared to manage both tracks – verifying the allegations and remaining cognizant of how others are interpreting it - may be equally important.

If you have any questions concerning any of these matters, please contact your primary Seward & Kissel attorney or a member of the [Financial Institution Risk Management](#) practice at Seward & Kissel.