Social Media & Influencer Compliance for Financial Institutions

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By 2022, the influencer marketing industry is predicted to be worth $15 billion, nearly doubling from 2019. As the term "influencer marketing" becomes more common across industries, there is one particular industry that is hopping onboard and transforming what influencer marketing looks like: *the financial services industry*.

With the rise of social media usage rapidly increasing across various platforms: Instagram, Twitter, Facebook, and YouTube, financial services brands – to include community banks and credit unions – are increasingly realizing the benefits of influencer marketing. However, many financial brands have held back from engaging in this space, but that could be changing quickly, as more financial institutions follow in the footsteps of early pioneers, matching themselves with social media influencers who can help break through modern communications clutter and reach new audiences/demographics.

But, what's the business case? One statistic essentially summarizes the business case for influencer marketing. Sixty-three percent (63%) of consumers trust influencer endorsements more than a company's brand advertising. This is rooted in distrust of advertising as a communications modality. As a practical matter, we do business with people we know, like, and trust – and influencers meet that criteria. However, all influencers are not created equal and can be broken down in the following categories:

- Mega: 1 million+ followers.
- Macro: 500,000 to 1 million.
- Mid-Tier 50,000 to 500,000.
- Micro: 10,000 to 50,000.
- Nano: Below 10,000.

Research indicates that financial brands tend to engage mid-tier influencers for their social media campaigns - 63% of the time, with micro-influencers coming in at a distant second. But community banks and credits unions are finding much success with micro and nano-influencers because their voices are closer to home — family and friends can be more influential in terms of which financial services providers consumers choose.

So how are financial brands engaging with agencies and influencers? It's no secret that, in order for financial brands to succeed in this endeavor, they have to first contend with a myriad of regulatory laws and policies when developing their influencer marketing strategy, such as the Federal Trade Commission (FTC) Social Media Endorsement Guidelines and the Federal Financial Institutions Examination Council () Social Media Consumer Compliance and Risk Management Guidance, to name a few.

Here are some suggested tips on how banks and credit unions can work with agencies and influencers to scale its brand, while playing by the rules.

1. Assemble a Multi-Disciplinary Team – Given the breadth and depth of the regulatory standards that apply either directly or indirectly to a financial brands social media usage to attract and engage with consumers, the brand should design its strategy with the participation from specialists in compliance, technology, information security and privacy, legal, human resources, and marketing.

1. Establish and Follow an Internal Social Media Endorsement Policy – Before engaging an agency or influencer, financial brands should adopt a written social media endorsement policy that complies with the FTC's Endorsement Guidelines. The policy should clearly define the types of material connections which make an influencer an endorser covered by the policy and by the Endorsement Guides.

1. Identify and Evaluate the Influencer to Determine Compatibility with Brands Image – The financial brand should develop a risk management process for selecting and evaluating potential influencers, to include but not limited to: (a) investigation of the influencer's personal and professional background; (b) review publicly posted materials by or about the influencer; and (c) determine whether the agency or influencer has previously been assessed any regulatory fines or penalties from the FTC or FFIEC.

1. Determine How the Company Intends to Hire and Monitor the Agency and Influencers – The FFIEC requires financial brands to implement a social media risk management program that requires a process to monitor information posted to proprietary social media sites administered by the financial institutions or a contracted third-party. However, to take it a step further, financial brands should also ensure someone is accountable for monitoring an influencer's post either internally by an employee or externally by a supplier.

1. Ensure the Agency and Influencer is Bound to Written Obligations – As the center piece of guarding the financial brand from unintended regulatory compliance consequences, the financial brand should set out business terms for their respective arrangements with agencies and influencers, to include standard commercial terms, as well as: (a) protection from liability for false advertising claims, (b) compliance with FTC and FFIEC standards, and (c) Morals Clause.

1. Comply with Social Media Platform Guidelines for Branded Content – Subject to the objectives of the financial brand's social media marketing campaign, each platform has a unique audience and thus has specific platform guidelines on which the influencer is engaging. Therefore, the financial brand should get familiar with the desired platform's branded content guidelines before launching the new influencer campaign.

As a financial brand considering influencer marketing or evaluating the compliance of your existing program, we understand it be daunting. If you have questions, please do not hesitate to give us a call.

Nexsen Pruet has a talented, entrepreneurial focused Social Media Law team to help serve a diverse range of client needs – whether you are a financial brand, digital marketing agency or influencer.