
Compliance and Marketing: You ain't seen nothing yet, folks

ABA conference speakers portray growing compliance challenges

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By Steve Cocheo, executive editor

Becki Drahota put up a PowerPoint of what looked at first like some kind of org chart. But she urged the 1,000-plus compliance officers and attorneys in the room to study it. They might have been thinking of it as the anatomy of a revitalized "enemy" or a map of what some might call "the new wild west." Most onlookers, including compliance chief Dan Soto, Drahota's co-speaker, had done their share of keeping Marketing kosher—with varying success.

What they were seeing on one slide were more than a dozen marketing channels, each in its own box, ringing a single circular box. The "satellites," each with an arrow pointing to the center, included such traditional channels as radio and print ads, brochures, direct mail, and point-of-purchase materials, and such nontraditional ones as web videos; web banners; e-blasts; Google pay-per-click ads; and Twitter and Facebook efforts. All of those channels were focused on one thing, in the example: Driving traffic to a single, tailored microsite.

"Budgets and resources are compressed," said Drahota. "Banks will need an awful lot of synergy. Everything must work together."

Welcome to the new bank marketing, with a wider selection of tools and techniques than compliance officers have seen in the past, said Drahota.

“We now have a consumer base that taps seven or eight channels to learn about things,” Drahota said. Just as marketing officers have been learning to sell bank offerings through this mix of channels, so too compliance officers must learn about the channels to keep the bank out of regulatory trouble.

On top of these trends, Drahota, president of Mills Financial Marketing, Storm Lake, Iowa, told her listeners that the pace of marketing has accelerated. Describing the marketer’s mindset, she warned, “There is no advantage to being the last guy to market.” If a bank has a “when” confronting its marketing timing, rather than an “if,” she said, there is a first-player advantage that has to be exploited.

For many banks, that need for speed will be a double shock, Drahota warned listeners at ABA’s recent 2011 Regulatory Compliance Conference. During the crisis, many institutions pulled in their marketing. In the absence of communication, a vacuum was filled by worse than nothing. The silence “allowed the public to define you by default,” said Drahota, “and as a result, there are a lot of bank brands out there that don’t stand for anything.”

Marketing view

“We now have a consumer base that taps seven or eight channels to learn about things”

—Becki Drahota, president, Mills Financial Marketing

Compliance view

“We have to follow the rules, and some of our old rules still apply”

—Dan Soto, Ally Bank

Other institutions fell back on “me-too” campaigns, Drahotá said, and that is also bad. If two competing banks tell their market, “We’re the best bank in town,” she said, the consumer can only draw one conclusion:

“One of you is lying.”

“Lying” is, in its own way, a “triggering term” for compliance officers.

Compliance looks at the new world

A rhetorical point, perhaps, but one that underscores the combination of increasing competition, many more channels to use and to watch, and growing compliance risks. None of this is static, either. Not long ago, just being on the web in a meaningful way was advanced. Now, it’s not only essential, but has to be done right in both the Marketing and Compliance arenas.

“The website is the mother ship,” said Drahotá. “But you need a sense of what its mission is. The website should not be the place where we tell everyone everything they want to know.” Yet what is there must be compliant.

The compliance audience obviously had a lot to digest here—the view Drahotá gave was somewhat breathtaking for all but those whose banks are on the leading edge. But her fellow speaker put the trends in some perspective.

“Toto, we’re not in Kansas anymore,” quipped Dan Soto.

Soto, a veteran compliance officer and former federal examiner, is now chief compliance officer at \$72.6 billion-assets Ally Bank, Midvale, Utah. (He’s based in Charlotte, N.C.)

More seriously, Soto pointed out that many of the rules that compliance officers have long worked under and striven to keep their banks complying with are not quite in synch with today’s marketing world. Despite this, said Soto, “We have to comply, because the consumer is who we ultimately have to get through to. We have to follow the rules, and some of our old rules still apply.” Much is not yet clear, and this makes the compliance officer’s job more difficult. But many basics remain.

Looking at website compliance, Soto pointed out that many of the traditional advertising and marketing basics still work in cyberspace. The challenge increases, because there is much more territory to patrol and to police. Content can become

stale, and even become noncompliant, if it is not tracked as part of an overall e-commerce compliance management program, Soto said. Compliance not only has to worry about current efforts, but also “lost pages” that may have been forgotten. And everything counts.

Moderator Elizabeth Snyder, formerly a bank compliance and risk management officer and now senior vice-president, compliance and risk management at the Illinois Bankers Association, asked the speakers: “You are telling me that I not only have to clear ads, but that I have to be involved in every tweet?”

Essentially, the answer was “yes.” Drahota noted that her firm actually employs an experienced bank compliance officer to help it keep things straight.

“We both agree that the brand is important, and that we can’t do anything to tarnish the brand,” said Soto. “We all fail if we don’t get it right.”

Deeper you dig, deeper you comply—or else

Drahota said bank campaigns will increasingly look like the chart described at the beginning of this article. Bank campaigns may, because of scarcer resources, be fewer in number. But there will be “more robust campaigns and longer campaigns,” she warned. Every layer of such campaigns will have to be vetted for compliance.

“Compliance is non-negotiable,” said Drahota.

Soto illustrated the challenge. The same consumer protection rules will apply, he said, as always. (And with the advent of the Consumer Financial Protection Bureau on the scene, more can be expected, especially under the expanded “UDAAP” regime—Unfair, Deceptive, and Abusive Acts and Practices.)

Disclosures must be made. Triggering terms must be followed through on, so a door, once opened, is addressed. Every hyperlink must be vetted for a myriad of potential issues.

In addition, Soto told listeners that no assumptions about the consumer audience can be made—compliance will have to be ensured for anyone who will see any aspect of the campaign.

“We can’t expect that they are all Gen Ys and that they can all have 47 pages open on their desktop at one time and comprehend it all,” said Soto.

Bankers must avoid the trap of thinking like bankers, thinking that what is clear to them, because they are in it, is clear to the casual visitor with no such background.

“We can’t assume that just because there is a scroll bar on the right on a web page that people will understand that there is more information available” if they scroll, said Soto. “Don’t assume anything is obvious, just because to you it is obvious. Wording that makes it clear how to get to the essential compliance points must be present.”

A good rule of thumb, he suggested, is that disclosures applicable to a product or service should be no more than one click away from the marketing message, if not closer. “Learn more” links can be helpful. Banner ads must be scrutinized to make sure they don’t contain triggering terms that aren’t somehow addressed. And links to disclosures should be very close to the triggering terms in such ads.

Be careful when being trendy

The world of websites and social media can be extremely spontaneous, something that doesn’t necessarily mix well with banks’ compliance challenges.

Soto warned bankers about engaging in negative blogs, where there is a temptation to trash other financial services players.

“Don’t play that game,” said Soto. If one bank loses, all banks lose, he warned.

Drahota said even when engaging in specific wording or web page structure for the sake of “search engine optimization”—the science of building pages that will be spotted and given priority by Google and other search engines—care must be taken. Words being used to attract the search engine routines—“robots,” “if you will”—still have to be true, said Drahota.

Social media questions to ask

Some have described the social media arena as “the wild west.” You might say, then, that Compliance is the marshall.

A popular technique for social media players is the contest, which was used as an example. Soto gave listeners four questions to ask:

* Does your institution have a formal policy on sweepstakes, contests, and promotions?

* Does such activity align with your institution's overall marketing and brand strategies?

* Does your institution have a formalized program to ensure that such activities align with both federal and state regulations governing these activities?

* Does your institution engage both legal and compliance resources to ensure the proper oversight, such as when to engage the services of a sweepstakes administrator or state registration?

Banks also have to be aware of the risks of social media done through handheld devices. Bank-owned computers on bank premises can be policed through blocking sites and other measures, but that's not a foolproof strategy.

Soto pointed out that many bankers carry both a bank mobile device and a personal mobile device. The latter can be a temptation to "go rogue," that is, to engage in some personal marketing. Even this must be subject to bank policies and controls.

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