

Revisiting the Rulebook

October 16, 2025

Table of Contents:

- [FDIC and OCC Issue Proposals on Ending Examination for Reputational Risk and Defining Unsafe and Unsound Practices](#)
- [The European Banking Authority Publishes Its Work Programme for 2026](#)
- [Cadwalader Elects Bobby DiNardo as Partner](#)

FDIC and OCC Issue Proposals on Ending Examination for Reputational Risk and Defining Unsafe and Unsound Practices

October 16, 2025



By Daniel Meade
Partner | Financial Regulation

Last week, on October 7, 2025, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the “Agencies”) issued two joint notices of proposed rulemaking (NPRs). **First** is an NPR to codify the elimination of reputation risk from their supervisory programs the “Reputation Risk NPR”). **Second**, is an NPR to define the term “unsafe and unsound practice” (the “Safety and Soundness NPR”).

For the Reputation Risk NPR, the NPR, if finalized as proposed, would codify the practice announced by the **Agencies** this Spring that examiners would not examine for reputation risk going forward. Under the NPR, the Agencies would not take an adverse action (defined by the proposed rule to include the provision of negative feedback, including a report of examination, a memorandum of understanding, verbal feedback, or an enforcement action). The FDIC staff noted in its staff **memo** to the Board that “[e]xperience has shown that the use of reputation risk in the supervisory process does not increase the safety and soundness of supervised institutions because supervisors have little ability to predict ex ante whether or how certain activities or customer relationships present reputation risks that could threaten the safety and soundness of an institution.” The FDIC staff memo on the Reputation Risk NPR also noted that “This change would also respond to concerns expressed in **Executive Order 14331**, Guaranteeing Fair Banking for All Americans, that the use of reputation risk can be a pretext for restricting law-abiding individuals’ and businesses’ access to financial services on the basis of political or religious beliefs or lawful business activities.”

For the Safety and Soundness NPR, the NPR, if finalized as proposed would make amendments to Parts 4 and 305 of the C.F.R., respectively to define an unsafe and unsound practice for purposes of an enforcement action as “a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1) is contrary to generally accepted standards of prudent operation; and

(2) (i) if continued, is likely to—

(A) materially harm the financial condition of the institution; or

(B) present a material risk of loss to the Deposit Insurance Fund; or

(ii) materially harmed the financial condition of the institution.”

The Safety and Soundness NPR goes on to limit when The Agencies’ examiners can issue a matter requiring attention or MRA in an exam “to an institution for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1) (i) is contrary to generally accepted standards of prudent operation; and

(ii) (A) if continued, could reasonably be expected to, under current or reasonably foreseeable conditions,

(1) materially harm the financial condition of the institution; or

(2) present a material risk of loss to the Deposit Insurance Fund; or

(B) materially harmed the financial condition of the institution; or

(2) is an actual violation of a banking or banking-related law or regulation.”

While the NPR would place limits on examiners, it would not limit their ability to communicate suggestions and observations to enhance an institution’s practices or operations, as long as examiners do not require the bank to take action as if a suggestion were the equivalent of an MRA.

Both NPRs are likely to be viewed by most institutions as a welcome deregulatory action, and are consistent with statements made by Comptroller of the Currency Gould and Acting FDIC Chairman Hill, as well as Federal Reserve Vice Chair of Supervision Bowman (note, the Federal Reserve did not join in the NPRs, but has made announcements

regarding no longer supervising on the basis of reputational risk) to focus on material financial risk to a financial institution and move away from the non-material procedural issues often raised in bank exams.

Comments on the NPRs are due sixty days after publication in the Federal Register. Neither proposal has yet been published in the Federal Register as of the date of this publication.

The European Banking Authority Publishes Its Work Programme for 2026

October 16, 2025



By Alix Prentice
Partner | Financial Regulation

On October 1, 2025, the European Banking Authority (**EBA**) published its [Work Programme for 2026](#), setting out actions “for a more efficient regulatory and supervisory framework in the EU.”

Notable priorities

- 2026 sees the EBA assume its oversight and supervisory functions over critical third party providers under the Digital Operational Resilience Act (**DORA**), issuers of crypto assets under the Markets in Crypto-assets Regulation (**MICAR**) and the use of initial margin models under the European Market Infrastructure Regulation (**EMIR**). This work will take place alongside business-as-usual work streams, including policy development, responding to change, developing a single rulebook that is fit for purpose and contributes to a resilient and efficient single market.
- The EBA will also be prioritising its work on the EU Banking Package (a series of prudential reforms and mandates, including the implementation of Basel 3.1). On operational risk, the EBA will be prioritising deliverables relating to operational risk management and governance on loss databases, and on credit risk, IRB (specialised lending) will be the focus.
- On securitisations, the EBA will continue actively following revisions to the securitisation framework and will prepare monitoring reports, including on the treatment of synthetic securitisations.
- The EBA is looking at additional elements for inclusion in 2027’s EU-wide stress tests, namely climate risks and non-bank financial institutions or NBFIs.
- In light of its role under DORA, MICAR and EMIR, the EBA will be taking a close look at critical third-party providers, including engaging with them on their governance, strategy, organisation, and services, looking at their contractual and service level arrangements and carrying out thematic and on-site inspections.

Cadwalader Elects Bobby DiNardo as Partner

October 16, 2025



Congratulations to our colleague **Bobby DiNardo** on being elected partner in Cadwalader's Financial Services practice!

Bobby advises investment banks, hedge funds, private credit sponsors, and other financial institutions on the structuring, negotiation, and execution of complex derivatives and structured financing transactions. His practice spans a broad range of trading, risk-management, credit-enhancement, and capital-relief structures, with particular focus on innovative hedging and financing solutions that integrate derivative and securitization techniques. Bobby's work includes deal-contingent and financing-linked hedging, credit-risk transfer and synthetic securitization transactions, total-return swaps and other bespoke derivatives and financing arrangements.

Bobby is actively involved in client development, attorney training and recruiting initiatives, and he serves as a mentor to junior lawyers at the firm. He earned his J.D. from Fordham University School of Law, his M.B.A. from Fordham University Graduate School of Business, and his B.S. from Fordham University.