COMPLIANCE STRATEGIES FOR SOCIAL MEDIA, MOBILE DEVICES & OTHER COMMUNICATION TOOLS

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Basic Obligations Related to Social Media and Mobile Device Use

Guiding principles behind rules, policies and procedures related to social media use include:

- Protecting investors from false or misleading claims and representations
- Effective and appropriate supervision of participation in and use of social media sites
- Maintain flexibility to allow firms to communicate with clients and investors using social media

FINRA Reg. Notice 10-06 (Jan. 2010)
Basic Obligations Related to Social Media and Mobile Device Use

- **Retention**
  - “Every firm that intends to communicate, or permit its associated persons to communicate, through social media sites must first ensure that it can retain records of those communications as required by Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 and [FINRA Rule 4511].” FINRA Reg. Notice 10-06
  - Advisors Act Rule 204-2(a)(7) requires (subject to some exceptions) retention of “(i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security.”
Basic Obligations Related to Social Media and Mobile Device Use

- **Retrieval**
  - Records retained must be “easily accessible” for first two years. SEA Rule 17a-4(b)
  - “Electronic storage” of social media communications is subject to SEA Rule 17a-4(f), and includes requirements to:
    - “have the capacity to readily download indexes and records ...”;
    - “at all times have available, for examination ... facilities for immediate, easily readable projection or production... and for producing easily readable images”;
    - Be able to provide “at all times” indexes of required records; and
    - Firms using electronic storage media, there must be at least one third party who “has access to and the ability to download information from the member’s, broker’s or dealer’s electronic storage media...”
Basic Obligations Related to Social Media and Mobile Device Use

- **Supervision**
  - “...FINRA expects a firm to have supervisory policies and procedures to monitor all electronic communications technology used by the firm and its associated persons to conduct the firm’s business. To that end, a firm should consider, prior to implementing new or different methods of communication, the impact on the firm’s supervisory system, particularly any updates or changes to the firm’s supervisory policies and procedures that might be necessary.” FINRA Reg. Notice 07-59 (December 2007).
  - “[A] registered principal must review prior to use any social media site that an associated person intends to employ for a business purpose. The registered principal may approve use of the site for a business purpose only if the registered principal has determined that the associated person can and will comply with all applicable FINRA rules, the federal securities laws, including recordkeeping requirements, and any additional requirements established by the firm.” FINRA Reg. Notice 11-39 (August 2011).
Developing Effective Compliance Strategies for Social Media and Mobile Devices

- Develop comprehensive understanding of the applicable rules and regulations
- Assess your firm’s current and anticipated uses of Social Media and Mobile Devices
- Update Policies and Procedures
  - Communicate those policies and procedures to your employees
  - Training
- Test the Effectiveness of the firm’s policies and procedures
Retention and Supervision Issues for Social Media (cont.)

- FINRA Reg. Notice 10-06
  
  “[I]t is up to each firm to determine whether any particular technology, system or program provides the retention and retrieval functions necessary to comply with the books and records rules. **FINRA does not endorse any particular technology necessary to keep such records, nor is it certain that adequate technology currently exists.**” (emphasis added)
Choosing and Integrating Compliance Tools for Supervision of Social Media and Mobile Devices

- Retention and Supervision Issues for Social Media
  - Third-party hosted platforms
    - Retention, retrieval and supervisory tools should be designed to function effectively even though the underlying platform is not maintained by the firm
    - Firms should develop an understanding of any proposed social media platform’s privacy policies, retention practices and functionality that allows users to add, modify, or delete content.
  - Access Restrictions and Content Pre-Approval
  - Supervision and Retention Solutions
    - Key Considerations Concerning Vendor Provided or Build-Your-Own Solutions
      - Scope of Coverage
      - Functionality
      - Integration with Existing Systems/Infrastructure
      - Cost
      - Maintenance/Support
Mobile Device Policies

- Bring Your Own Device (BYOD) or Firm-Issued Devices
  - Business Case for Firm-Issued Devices
    - Enhanced Control/Security
    - Ease of Support/Maintenance
    - Clear Lines between Business/Personal Use
  - However,
    - Firm-Issued can be costly (devices/data plans)
    - Employees want flexibility
    - Convenience of single device
• Bring Your Own Device (BYOD) or Firm-Issued Devices

  o Business Case for BYOD
    » Employee Choice
    » Lower Up-Front Costs

  o However,
    » Business/Personal Use Lines Can Be Blurred
    » Security issues
    » Support issues
Other Information Sharing Platforms and Communications Infrastructure Issues

- **Third-Party Information Sharing Sites**
  - Data Rooms
    - Consider access and permissions
    - Policies Regarding Communications within Data Rooms

- **Wireless Internet**
  - Guest Access
  - Employee Access to Wireless Internet
  - Security over Firm WiFi Systems