

UPDATED AFTER
NOVEMBER 4TH,
2022



NEW SEC MARKETING RULE: FINANCIAL ADVISOR COMPLIANCE GUIDE

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NEW SEC MARKETING RULE: FINANCIAL ADVISOR COMPLIANCE GUIDE

Whether you are sending emails, logging information in your CRM, posting on social, or running paid ads, as a fiduciary, you must remain compliant in all of your marketing materials and keep diligent, thorough records.

One of the best ways to ensure you do not break any rules is to involve [compliance](#) in the review process of your workflow for any content you publish on your website or promote on your social media accounts.

DEVISING A SMART COMPLIANCE PLAN

You have probably heard of SMART goals before. But just in case you have not, it stands for:

**Specific—Measurable—
Attainable—Relevant—Timely**

Your [marketing program](#) goals should also be SMART.

- Select specific topics that your audience is interested in learning more about
- Analyze how your content performs and measure the conversion rate
- Set attainable milestones and objectives to move the needle forward
- Tailor your content so that it is relevant to your clients
- Choose timely content related to what is happening in the market, economy, etc.

Develop a robust marketing plan with detailed information about policies, procedures, and approved content. Make this easily accessible for anyone within the company to reference. This should be a working document that you revisit and update quarterly or annually, depending on the amount of content you produce.

RULES ARE RULES

SEC Marketing Rule

Rule 17a-4(f) states that those records required to be maintained and preserved can be stored on micrographic media...or by means of electronic storage media.

Media must:

- Preserve the records exclusively in a non-rewriteable, non-erasable format (WORM).
- Automatically verify the quality and accuracy of the storage media recording process.
- Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media.
- And have the capacity to readily download indexes and records preserved on the electronic storage media to any medium.



WANT LEADS TO START FALLING INTO YOUR LAP?

Click here [for 10 tips to get more prospects into your sales pipeline!](#)



First, they give you their contact information to see a piece of content you have produced. Then, you then take them through the lead stages to qualify them. You continue to provide them with valuable content and allow them to get to know you better until they schedule a call or a meeting.

SEC Rule 17a-4(f)(3)(v) requires that broker-dealers have an audit system providing for accountability regarding inputting of records...to electronic storage media. And subsection (f)(3) (vii) notes that a firm exclusively using electronic storage media for some or all of its record preservation must designate at least one third-party... who has access to and the ability to download information.

New SEC Marketing Rule

Are you prepared for the new SEC

marketing rule?

Before these new regulations, advisors couldn't utilize first-hand accounts from satisfied customers.

But that's all changed as of November 4, 2022!

Do you know all the disclaimers and disclosures you need to accompany your marketing materials?

You still have to maintain [marketing compliance](#) with endorsements and testimonials, or you risk incurring substantial fees.

Involve compliance in the review process of your workflow for content you publish on your website or promote on your social media accounts, especially if they contain endorsements.

You should be even more selective about who you solicit testimonials from than you are about [referrals](#). Do not send a mass email to your entire

client database because if you get any negative responses, those are considered client complaints and must be reported.

There are 7 things you absolutely must NOT include in your advertising:

1. Untrue statement of material fact or omission of a material fact necessary to make the statement made not misleading.
2. Material statement of fact the advisor does not have a reasonable basis to believe it will be able to substantiate upon SEC demand.
3. Information reasonably likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the advisor.
4. Potential benefits to investors connected with or resulting from the advisor's services or methods without fair and balanced

treatment of material risks or limitations.

5. Reference to specific advice provided by advisor not presented in a fair and balanced manner.
6. Include or exclude performance or present performance time periods, not in a fair and balanced manner.
7. Otherwise materially misleading information.

FINRA Communication Rule

Firms must comply with FINRA's communication rule notwithstanding the medium—[social media](#), email, or print.

- All communications must be fair, balanced, and complete and not omit material information.
- False, misleading, promissory, exaggerated, or unwarranted statements or claims are prohibited.
- Communications may not predict or project performance (with certain exceptions).
- Material information in a communication may not be buried in footnotes.
- Statements must be clear and provide a balanced treatment of risks and potential benefits.
- Communications must be appropriate for the audience.

Yes, FINRA's rules on communicating with the public apply even to

TikTok. FINRA's advertising rules and guidance do not apply to an associated person's personal use of [social media](#). However, firms must educate their personnel on the difference between personal and business uses of [social media](#). If firm personnel use a personal site for business, then this may result in a situation where the firm is unable to retain records of [client communications](#) as required.

The rules protect investors from false, misleading claims, exaggerated statements, and material omissions.

Firms must have the ability to supervise the business-related content associated persons are communicating on these sites, including possible suitability determinations if recommendations are made. A registered principal must review prior to using any [social media](#) site that an associated person intends to use for business. The principal may only approve a [social media](#) site if the principal has determined the associated person can and will comply with applicable rules.

Static content is typically posted for the longer term and lacks the immediacy of a real-time conversation. Most static material must be approved by a registered principal prior to use and sometimes may be required to be filed with FINRA.

Interactive communications are typically real-time and involve a dialog

with third parties. Interactive material does not require principal approval prior to use if it is supervised in a manner similar to the way firms supervise correspondence and institutional communications. Under the rules, if a firm allows associated persons to use interactive communications prior to principal approval, then the firm's written supervisory procedures must provide for:

- Training of associated persons on the procedures and the content standards of the communications rules
- How the firm will surveil these communications to test for compliance
- What actions will be taken if problems are detected
- Documentation of any findings and the corrective actions taken

Exchange Act Rules 17a-3 and 17a-4, as well as FINRA Rule 3110(b) (4) (Review of Correspondence and Internal Communications) and FINRA Rule Series 4510 (Books and Records Requirements), require a firm to, among other things, create and preserve, in an easily accessible place, originals of all communications received and sent relating to its business as such. If a firm permits its associated persons to use a particular application—for example, an app-based messaging service or a collaboration platform—the firm must preserve records of business-related communications and supervise the activities and communications of those persons on the application.

Firms remain responsible for conducting due diligence to comply with the securities laws and FINRA rules and follow up on red flags of potentially violative activity and may, in some cases, use services provided by the relevant digital channel or third-party vendors.

The recordkeeping requirements apply to third-party content posted in a firm's interactive electronic forum. In addition, firms must ensure that they are reviewing third-party posts to properly identify and handle, in accordance with firm procedures, any customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under FINRA rules and





federal securities laws.

However, third-party posts generally are not subject to FINRA's advertising rules unless the firm has adopted or become entangled with the content of an interactive post. Adoption occurs when a firm endorses or approves third-party content, and entanglement occurs when the firm involves itself with the preparation of the third-party post.

Suitability rules apply to recommendations made through [social media websites](#). Firms should develop procedures to supervise interactive electronic communications that recommend specific products and prohibit interactive electronic communications that recommend specific products unless:

- A registered principal has previously approved the content
- The recommendation conforms to a previously approved template

Use of Prohibited Digital Channels: In some instances, firms prohibited the use of texting, messaging, social media, or collaboration applications (e.g., WhatsApp, WeChat, Facebook, Slack, or HipChat) for business-related communication with customers but did not maintain a process to reasonably identify and respond to red flags that registered representatives were using impermissible personal digital channel com-

munications in connection with firm business. Red flags could be detected through, for example, customer complaints, representatives' emails, outside business activity reviews, or advertising reviews.

Prohibited Electronic Sales Seminars: Some registered representatives conducted electronic sales seminars in a chatroom or on digital channels that were not permitted by their firms and were outside of supervision or recordkeeping programs.

Establishing Comprehensive Governance: Some firms maintained governance processes to manage firm decisions and develop [compliance](#) processes for each new digital channel, as well as new features of existing channels. Such firms worked closely with their [marketing compliance](#) and information technology departments, as well as their third-party vendors, to monitor the rapidly evolving array of communication methods available to their associated persons and customers.

Defining and Controlling Permissible Digital Channels: Firms with holistic supervision and record retention programs and policies clearly defined permissible (as well as prohibited) digital channels; blocked prohibited digital channels (or prohibited features of permitted channels); restricted the use of messaging and collaboration apps that limit the firm's

ability to comply with its recordkeeping requirements (such as apps with end-to-end encryption or self-destructing messages); established how permitted communications will be stored in a compliant manner; and implemented supervisory review procedures for communication and recordkeeping that are appropriate for the firm's business model and tailored to each digital channel.

Managing Video Content: Some firms implemented WSPs to manage the lifecycle of video content, which could include, for example, live-streamed public appearances, scripted commercials, or video blogs.

Training: Some firms implemented mandatory training programs prior to providing registered representatives access to firm-approved digital channels. The training clarified the firms' expectations for business and personal digital communications and assisted personnel with using all permitted features of each channel in a compliant manner.

Disciplining Misuse of Digital Communications: Some firms temporarily suspended or permanently blocked from certain digital channels those registered representatives who did not comply with the firm's digital channel policies and required additional digital communications training.



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GENERATING LEADS WITHOUT INVITING RISK

MAINTAINING YOUR AUDIT TRAIL

An audit trail is a sequential record that details the history of financial data and traces it to the source. Maintaining your audit trail is a best practice and often a regulatory requirement.

Maintaining your audit trail encourages accountability, improves security, preserves [compliance](#), and protects against fraud.

Your data needs to be organized occasionally, updated regularly, and frequently monitored to prevent any miscalculations and catch any errors before it impacts the business.

ADVISE DON'T SUGGEST

You should never recommend a particular investment or product to a broad audience, as this will get you in hot water when it inevitably does not work out for someone.

No matter how targeted you get with your digital marketing, you can only partially control who sees your content.

Each client should receive one-on-one holistic financial advice tailored to their specific needs, and that is not possible if you push products online to the masses.

The goal of your [marketing plan](#) should be to guide each individual prospect through the [sales funnel](#).

First, they give you their contact information to see a piece of content you have produced. Then, you then

take them through the lead stages to qualify them. You continue to provide them with valuable content and allow them to get to know you better until they schedule a call or a meeting.

Finally, you hand them off to sales and let the closers do their job.

You should not start suggesting strategic investments or specific products until after you have developed a rapport and you understand their particular financial goals.

KEEPING UP WITH COMPLIANCE TRENDS

Rules and regulations change quickly and often, so it is vital that you stay as up-to-date on [compliance trends](#) as you do on market trends.

Luckily, there are countless convenient ways to get your information and news these days to ensure you are keeping up with compliance trends.

- Follow Experts on Social Media
- Network with Other Financial Professionals
- Build Relationships with [Compliance](#)
- Attend [Seminars](#)
- Read [Industry Periodicals](#) & Reports
- Join Professional Associations or Clubs
- Sign Up for Newsletters and Alerts
- Subscribe to [Blogs](#)
- Utilize Innovative Technology & Software
- Monitor Regulatory Agency Websites
- Listen to [Podcasts](#)



ABOUT THE AUTHOR

Matt Seitz is the Executive VP of Marketing at C2P Enterprises; and CMO for JL Smith, an independent retirement planning and wealth management firm. In his role, Matt has spearheaded the digital growth of the company, reinforced branding, and implemented content marketing strategies to drive leads into the sales funnel.

Matt has over 15 years of marketing and sales experience in the professional services and financial services industries, as well as accounting, insurance, and construction. He has degrees in marketing, management, and human resources. His professional philosophy is grounded in relationship marketing—focusing on customer service and satisfaction through data-driven marketing plans with clear ROI.

Matt's areas of expertise include strategic planning, digital marketing, lead generation, and content marketing, receiving industry recognition for content marketing, video marketing, and lead generation campaigns. He is an author and speaker on a variety of marketing and business development topics.

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