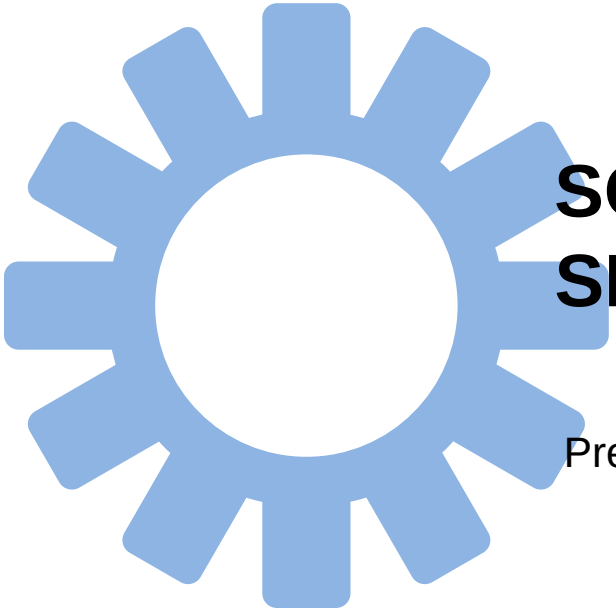


SOCIAL MEDIA & FINANCIAL SERVICES: FRIEND OR FOE

Presentation to ‘The Institute of Internal Auditors’ (IIA)

Ross Whelan

2nd August 2016

PROPOSED AGENDA

- THE GROWTH OF SOCIAL MEDIA
- BALANCING RISK WITH REWARDS
- KEY LEGISLATION AND GUIDELINES
- KEY ENFORCEMENT ACTIONS
- COMPLIANCE CONSIDERATIONS

THE GROWTH OF SOCIAL MEDIA

WHAT CONSTITUTES SOCIAL MEDIA

DEFINITION

"Social media share the characteristic of being digital and can be defined as websites and applications that enable users to create and share content or participate in social networking." Financial Conduct Authority (FCA)

"A form of interactive online communication in which users can generate and share content through text, images, audit, and /or video" Federal Financial Institutions Examination Council (FFIEC)

"An umbrella term that encompasses various activities that integrate technology, social interaction and content creation. Social media may use many technologies, including but not limited to blogs, microblogs, wikis, photos and video sharing, podcasts, social networking, and virtual worlds." Securities Exchange Commission (SEC)

DIFFERENT FORMS OF COMMUNICATION

Social media can take many forms, including, but not limited to:

- Micro-blogging sites (e.g. Facebook, Google Plus, MySpace, and Twitter);
- Forums, blogs, customer review web sites and bulletin boards (e.g. Yelp);
- Image and video sites (e.g. Flickr, Instagram, Vine, Pinterest and YouTube);
- Sites that enable professional networking (e.g. LinkedIn);
- Virtual worlds (e.g. Second Life); and
- Social games (e.g. FarmVille and CityVille).

BALANCING RISKS WITH REWARDS

BALANCING RISKS WITH REWARDS

QUANTIFYING RISK

Beyond identifying well publicised cases of companies that have suffered because of social media, comprehensive cost/benefit analysis is still at a relatively early stage, thus many risks still go uncontrolled.

There are some clear opportunities where companies can benefit:

- **Customer Services & Reputation Management**

  Social media enables finance organisations to actively share information about corporate social responsibility (CSR) programmes, and get both staff and customers involved. Campaigns such as #BestOnlineYou, which shares tips on how to make a good impression online has helped Barclays to build conversations around it's brand, and make the bank look knowledgeable and helpful.

  Some firms have established multiple social media channels and in some cases have developed social media customer hubs which actively monitor for references made to their firm on social networks and respond to customer comments. By identifying issues that may pose a risk to their brand and having the right procedures and people in place, firms can potentially stop a minor issue growing into a crisis. For example, Barclays' has over 60 people dedicated to monitoring Twitter (#Barclays) and Facebook with the authority to respond and deal with 'low level' customer issues.

  Research has also shown that social media is more cost effective for delivering customer service and can work effectively in parallel to the existing customer complaints process.

- **Targeting Customers**

  Through rewards programmes, banks now have the ability to encourage loyal customers to share their positive experiences via social media. In the case of Paypal, the organisation created an effective brand ambassador programme (@AskPayPal handle) to help reverse the negative perception around the brand and help customers understand how to use its services more effectively.

  Citi teamed up with the LinkedIn channel to create the Connect: Professional Women's Network, which is regarded as one of the fastest growing and most active user groups on LinkedIn.

BALANCING RISKS WITH REWARDS

- **Research & Development/Customer Insights**
  As well as addressing individual customers, social media enables firms to analyse the behaviour of its broader customer base. By listening to customers and analysing how they perceive a company's products and services, firms can get a better understanding as to what potential areas of interest a customer may wish to engage in or alternatively identify what products or services just aren't working.

- **Recruitment**
  Many financial services firms are now using social media to target and engage with potential employees and present a more human side of the bank.

BALANCING RISKS WITH REWARDS

The principal risks associated with using Social Media can be categorised into the following 3 broad areas:

- **Operational Risk**
  Centres around issues of copyright, employee confidentially agreements, monitoring employees on social media, establishing who ultimately 'owns' the content posted on the media, issues such as account takeover or vulnerability due to malware. The focus here is the loss arising from inadequate or failed processes or systems related to a firms use of technology when it engages in social media activity.

- **Reputational Risk**
  The focus here is how the Firm deals with what it or its employees say online along with what others may say about it (and how it reacts to that). An organisation's reputation, brand, and goodwill are an asset. If this asset is impacted in a negative manner, then the organisation's customers will no longer wish to conduct business with them.

  This category includes Fraud and Brand Identify risks, Third party risks (the risk of association whereby the actions of third party may be perceived by our clients to be the actions of the firm using site), customer complaints and inquiry (failure to respond and resolve customer complaints timely), inappropriate use by employees of social media (making disparaging comments/misrepresentations) and Privacy Risk (the adverse use of customer information for marketing purposes).

  Who can forget the serious security breach by Facebook in 2013 where a software bug enabled a program to inadvertently publicly share confidential user information of some 6 million users.

EXAMPLES OF INVESTMENT FRAUD

'Pump & Dump'/Market Manipulation; fraudulent use of "Research Opinion" and online investment newsletters to present 'independent unbiased recommendations'; the use of High Yield Investment Programs by unlicensed individuals to promise incredible returns.

BALANCING RISKS WITH REWARDS

- **Regulatory Risk**

  Companies must consider the potential for ‘insider trading’ and ‘market manipulation’ concerns arising from the use of social media. The focus here is 'public-company disclosures' and what official information is made public, when and by whom. What disclosure rules may be breached by the premature release of financials (Material Non-Public Information (MNPI)) or even a throwaway reference to them.

  In the case of US firms the FFIEC has provided excellent guidance regarding which legal and regulatory obligations which firms must be cognisant of:

  - Deposit & Lending Products: Truth in Lending Act (TILA); Real Estate Settlement Procedures Act (RESPA); Fair Debt Collection Practices Act (FDCPA); Unfair, Deceptive or Abusive Acts or Practices; and Fair Lending Laws.
  - Payments Systems: Electronic Fund Transfer Act (EFTA); Check Based Transactions.
  - Bank Secrecy Act/AML Program.
  - Privacy: Gramm Leach Bliley Act (GLBA) Privacy Rules and Data Security Guidelines, CAN-SPAM Act and Telephone Consumer Protection Act (TCPA), Children’s On-line Privacy Protection Act (COPPA).

KEY LEGISLATION AND GUIDELINES

REGULATORS & SOCIAL MEDIA

One of the critical steps to developing an effective social media usage programme is to first understand the key legislation and regulatory requirements.

United States (US)
Federal & Self Regulatory Organisations
Financial Industry Regulatory Authority (FINRA)
National Futures Association (NFA)
Securities Exchange Commission (SEC)
Commodities Futures Trading Commission (CFTC)
Federal Financial Institutions Examination Council (FFIEC)

United Kingdom (UK)
Financial Conduct Authority (FCA)

Canada
Investment Industry Regulatory Organisation of Canada (IIROC)

Singapore
Monetary Authority of Singapore (MAS)

Hong Kong
Securities and Futures Commission (SFC)

KEY LEGISLATION & GUIDELINES - SEC

The use of social media for company communications can raise concerns in connection with both private and public offerings of securities.

Securities Act Section 5

Social media communications could potentially result in:

- Impermissible general solicitation or general advertising in connection with a private offering;
- 'Gun-jumping' or conditioning the market in connection with public offerings; and
- Company communications that are subject to special rules for the use of a free writing prospectus in connection with public offerings.

Securities Act

Public Offerings

The SEC has indicated that statements made through electronic means, such as website postings and e-mails, can be deemed written offers for the purposes of the communications rules under the Securities Act.

Securities Act Regulation D

Private Offerings

Regulation D provides an exemption for companies conducting private offerings meeting the conditions in Rule 502 [(c) prohibits an issuer or any person acting on the issuer's behalf from offering or selling ''securities by any form of general solicitation or general advertising"]

Securities Act Regulation S

Offshore Offerings

Where offering material is posted, the medium must have a prominent disclaimer that makes clear the offer is directed at non-U.S. Persons with procedures in place to ensure no sales are made to U.S. persons in the Regulation S offering.

Source: http://www.sec.gov/

KEY LEGISLATION & GUIDELINES - SEC

In 2012, the SEC issued a **Risk Alert** which outlined factors that require consideration when a firm and/or its advisors use social media.

Record Keeping obligations do not differentiate between the various media types and therefore all records if required under the Advisers act should be retained. In the case of third party postings, the use of social plug-ins such as a 'like' button could be construed as a testimonial.

In 2012, the SEC indicated that social media was acceptable for **company announcements** as long as investors were alerted in advance.

Companies are now permitted to post earnings and investment updates to Twitter and Facebook, as long as investors are told where to look in advance of the postings.

SEC REGULATION FD

Disclosure of Material Non-Public Information

Regulation FD *"is intended to ensure that all investors have the ability to gain access to material information at the same time."* It therefore prohibits public companies from selectively disclosing MNPI to certain persons (generally includes securities market professionals and security holders) who may trade on the basis of the MNPI. In the event of a prohibited disclosure occurring, the company must disclose that information either simultaneously (in the case of intentional disclosures) or promptly (in the case of unintentional disclosures).

In determining what is 'public', there are 3 considerations:

- Is an issuer's medium a "recognised channel of distribution?"
- Is information posted in a manner calculated to reach investors?
- Is information posted for a reasonable period of time so that it has been absorbed by investors?

Source: http://finra.complinet.com/

KEY LEGISLATION & GUIDELINES - SEC

Investment Advisers Act of (1940) ("Advisers Act)

SEC Rule 206(4)-1(a)(1) of the Investment Advisers Act prohibits an investment adviser from publishing any advertisement that, among other things, refers directly or indirectly to any testimonial concerning the investment adviser, or concerns any advice, analysis, report or other service rendered by such investment adviser.

In 2014, the SEC issued guidance concerning the application of the Testimonial Rule and social media whereby advisers could use public commentary from independent third party social media sites on the condition that:

- Such sites provided content independent of the adviser or representative;
- There was no material connection between the independent social media site and the adviser that would call into question the independence of the commentary; and
- The adviser or its representative publishing all unedited comments appearing on the independent site.

Furthermore articles regarding an advisers investment performance would not be regarded as a testimonial unless it included a statement of the clients experience with or endorsement of the adviser.
Although advisers were permitted to refer to public commentary from independent sites in their own non-social media advertisements, they were not permitted to publish these testimonials.

FINRA rules do not prohibit "testimonials" provided that such recommendations/endorsements are presented with the appropriate disclosures, such as "past performance are not indications of future performance."

Source: http://finra.complinet.com/

KEY LEGISLATION & GUIDELINES - FINRA

Communications with the Public

Simplified under **FINRA Rule 2210** to:

- Retail Communication:
  Any written or electronic communication distributed to more than 25 retail investors within any 30-calendar day Period.
- Correspondence:
  Any written or electronic communication distributed or made available to 25 or fewer retail investors within any 30-calendar-day period.
- Institutional Communication:
  Any written or electronic communication distributed or made available only to institutional investors
  Does not include a member's internal communications.

Supervision of Institutional Communications and Correspondence

- Institutional communications
  - Flexible supervision:
    - Risk-based procedures
    - Training
    - Surveillance
    - Follow-up to correct problems

Internal use only communications used within a single broker dealer are not subject to FINRA Rule 2210; however, each firm must adopt procedures to supervise this area of its business.

- Correspondence
  - Flexible supervision under FINRA’s supervision rules

KEY LEGISLATION & GUIDELINES - FINRA

Internal Approval of Retail Communications

- An appropriately qualified, registered principal must approve each retail communication prior to use or filing with FINRA.
- Exceptions from principal approval include:
  - Retail communications, supervised in the same manner as correspondence, that:
    - Do not make any financial or investment recommendation or promote a product or service;
    - Are posted to an online interactive electronic forum (social media);
    - Are excepted from the definition of “research report” (e.g., market letters); and
  - Retail communications, filed by another firm, and found by FINRA to be consistent with standards.

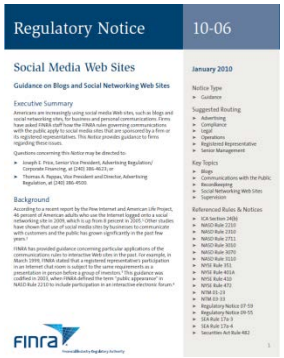
Recordkeeping

- Retain all communications for 3 years as required by the Securities Exchange Act of 1934 (SEA) Rule 17a-4(b).
- Records for retail and institutional communications must include:
  - A copy of the communication and the dates of first and last use;
  - The name of the registered principal approving the communication;
  - The date of approval; and
  - Information concerning the source of any statistical table, graph, or illustration.

KEY LEGISLATION & GUIDELINES - FINRA

Filing Requirements – Retail Communications

- Filing requirements apply only to certain retail communications used with more than 25 retail customers within 30 calendar days.
- Communications that must be filed 10 business days prior to first use:
  - New member firms must file certain retail communications for one year based on their membership effective date. These include:
    - Electronic or public media (i.e. any generally accessible website, newspaper, magazine, radio, television, signs, and billboards.)
  - Security futures
  - Registered investment company ranking that is not generally published or is the creation of the investment company
  - Options retail communications used prior to delivery of the Options Disclosure Documents (ODD) must also be filed 10 calendar days prior to use.
- Retail communications that must be filed within 10 business days of first use include:
  - Registered investment companies
    - Mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, variable annuities and variable life insurance products;
  - Public direct participation programs;
  - Investment analysis tool templates and reports; and
  - CMOs and derivative products registered under the Securities Act of 1933.


Regulatory Notice 10-06

Social Media Web Sites

Guidance on Blogs and Social Networking Web Sites

January 2010

Executive Summary

Background

FINRA

REG. Notice 10-06

KEY LEGISLATION & GUIDELINES - FINRA

The Financial Industry Regulatory Authority (**FINRA**), successor to NASD, has long recognised the potential for compliance issues posed by the use of social media with guidance on the matter, so with the increasing popularity and use of social networking sites like Facebook, LinkedIn, and Twitter, the industry felt it was necessary to issue guidance specific to social media .

Regulatory Notice 10-06 (Jan 2010) addresses five key guidance areas:

FINRA RULE 4510

Record Keeping Responsibilities

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 (SEA) of 1934 and FINRA Rule 4510. *"broker-dealers to preserve certain records for a period of not less than three years, the first two in an easily accessible place."*

The content of the communication is determinative as to whether the communication is a business record, and thus whether firms must retain those records.

FINRA RULE 2111

Suitability Responsibilities

Under FINRA Rule 2111 (formerly NASD 2310), a broker-dealer has a suitability obligation; i.e. it must ensure that any recommendation relating to a security or an investment strategy is suitable for the particular customer. These types of communication often need to include additional disclosure to provide customers with sound information for evaluating the facts about a product.

KEY LEGISLATION & GUIDELINES – FINRA (Cont'd)

FINRA RULE 3110

Supervision

Under FINRA Rule 3110, a broker-dealer is required to establish and maintain a system to supervise the activities of each associated person and ensure that they have the necessary training /background for such activities. A firm also needs to have an appropriate policy in place which prevents employees from using 'unsupervised' social media platforms and provided guidance around what is permissible for each of the different social media platforms.

Social Media Content Categories

FINRA defines the difference between social media sites and blogs that are considered "static" or "dynamic," and therefore require different approval and supervision rules.

Static

- Treated like an 'advertisement'
- Requires pre-approval
- Must be recorded in archive

Examples: Facebook, Twitter or LinkedIn Profile content or promoted content

Dynamic/Interactive/Real Time

- Treated like a Public Appearance
- Should be fair and balanced
- Cannot be recommendations
- Must be monitored by a supervisor

Examples: Facebook/Twitter posting; LinkedIn status update

FINRA RULE 2210

Links, third party posts and sites

Although customer or third-party content posted on a firm's social media site is generally not considered part of a firm's "communication with the public" a broker-dealer may become responsible for third-party posts if it is involved in the preparation of the content or via explicit or implicit *"recommendations"* or *"endorsements"*.

A firm may not establish a link to any third-party site that the firm knows or has reason to know contains false or misleading content. A firm is also deemed responsible under FINRA 2210 for content on a linked third party site if the firm has 'adopted' or has become 'entangled' with its content.


Regulatory Notice 11-39

Social Media Websites and the Use of Personal Devices for Business Communications

Guidance on Social Networking Websites and Business Communications

August 2011

FINRA

REG. Notice 11-39

KEY LEGISLATION & GUIDELINES – FINRA (Cont'd)

Regulatory Notices 11-39 (August 2011) responds to questions raised by **Regulatory Notice 10-06** by providing further clarification concerning application of the rules to new technologies :

- Firms are required to preserve any business related web content, be it on websites, blogs, Twitter, Facebook, YouTube, Orkut, LinkedIn or any other social network.
- In accordance with SEA Rule 17a-4, records must be preserved for three years — the first two years of content must be easily accessible.
- Record keeping requirements *do not differ* for static and interactive content — both must be preserved in accordance with SEA Rule 17a-4.
- Firms are not permitted to use technology that automatically erases or deletes the content of an electronic communication as this would "preclude the ability of the firm to retain the communications in compliance with their obligations under SEA Rule 17a-4."
- Firms should be aware of third party links and should not include a link on its website if there are any red flags that indicate the linked site contains false or misleading content.

Source: http://finra.complinet.com/

KEY LEGISLATION & GUIDELINES – FINRA (Cont'd)

Spot Check of Social Media Communications

Under FINRA Rule 2210, each firm's written (including electronic) communications are subject to a periodic spot-check procedure. FINRA sent a **Targeted Examination Letter** (June 2013) to twenty-two firms requesting that each firm provide:

- An explanation of how the firm is currently using social media (e.g., Facebook, Twitter, LinkedIn, blogs) at the corporate level in the conduct of its business.
- The URL for each social media website used by the firm, the date the firm began using each of the sites, and the identity of all individuals who post and/or update content of the sites.
- An explanation of how the firm's registered representatives and associated persons generally use social media in the conduct of the firm's business, including date(s) the firm began allowing the use of each social media platform and whether such usage continues.
- The portion of the firm's written supervisory procedures concerning the production, approval, and distribution of social media communications.
- An explanation of the measures the firm has adopted to monitor compliance with the firm's social media policies (e.g., training, annual certifications, technology).
- A list of the firm's top 20 producing registered representatives (based on commission sales) who used social media for business purposes to interact with retail investors.

Source: http://www.finra.org/industry/spot-check-social-media-communications/

KEY LEGISLATION & GUIDELINES - FCA

Disclosure & Transparency Rule 2.3

Disclosure and control of inside information by issuers
Requires an organisation to disclose inside information via a Regulatory Information Service (RIS) prior to, or simultaneously with, disclosure on its internet site.

Disclosure & Transparency Rule 2.7

Requires the disclosure of inside information in response to press speculation or market rumour in some circumstances.

Listing Rule 7.2

Listing and Premium Listing Principles
Requires 'Listed Companies' to have adequate systems in place to promptly identify **disclosable information**.

GC14/6 Social media and customer communications (Aug. 2014) outlined the regulators supervisory approach to financial promotions in social media.

PRINCIPLE 7

Principles for Business
Under Principle 7: Communications with clients, it remains a fundamental requirement that all communications (including financial promotions) are '**fair, clear and not misleading**'.

Source: http://fshandbook.info/FS/html/FCA

KEY LEGISLATION & GUIDELINES - FCA

COBS 4.3

Definition of "financial promotion" is broad.
Under the FCA definition, a*"...any form of communications (including through social media) is capable of being a financial promotion if it includes an invitation or inducement to engage in financial activity. All communications (including financial promotions) must be fair, clear and not misleading."*

The FCA provides visual examples in the consultation document, showing what does and doesn't qualify as a financial promotion (COBS 4.3). Also, firms promoting investment products on social media must make it clear when a communication is a promotion. One generally accepted way to do this is to use #ad when posting to character-limited media, including Twitter.

For promotion of some products or services, firms must also include risk warnings or other statements in social media posts to meet compliance requirements. The FCA provides examples of potential ways to do this, even with character limitations, such as inserting images or info graphics into tweets to display the required information.

Consider each communication individually.
Under the guidance each tweet, Facebook post, web page or other social communication needs to be considered individually, and must comply with the relevant rules. For instance, during a campaign, each individual communication must include clear and visible relevant risk warnings, i.e. "The value of your investment can go up or down so you may get back less than your initial investment."

Record Keeping
Firms are obligated to have a system in place to keep adequate records of significant digital communications. The records help protect consumers, and allows firms to deal more effectively with any subsequent claims or complaints. Firms should not rely on the social media channels themselves to archive communications.

Source: http://fshandbook.info/FS/html/FCA

KEY LEGISLATION & GUIDELINES – FCA SUMMARY

COBS 4.3.1R, COBS4, MCOBS3, ICOBS2.2

Content

- Financial message should be easily identifiable and not be misleading.
- Adding #ad for promotional posts on twitter to identify promotions as such
- Ensure adequate targeting of messages to avoid confusion
- Ensure risk warning and other required statements are included – use links and images if character limited

SYSC 3.1.6R, 3.2.6R, 4.1.1R AND 4.3.1R. COBS 4.10, MCOB 3.9 AND 3.11, ICOBS 2.2.3R, COBS 4.3.1R, COBS4, MCOB3, ICOBS2.2

Supervision

- Should have adequate system in place to sign off digital media communications.
- Sign-off should be by an appropriate person in the company
- Ability to monitor non-compliant language

COBS 4.11, MCOB 3.10; ICOBS 2.4

Record Keeping

- Firms should also keep adequate records
- Firms should not rely on digital media channels to maintain records

KEY LEGISLATION & GUIDELINES – NFA

Interpretive Release 9063 (December 2009) provide guidance on firms' responsibilities in connection with online social networking facilities, e.g., blogs, Facebook, chat rooms, etc.

- The Release provides that any electronic content that can be viewed by the general public can be considered promotional material subject to NFA compliance rules. For example, blogs discussing commodity futures, options or forex that are written by a firm and posted on either the firm's website or a third party's site are considered promotional material.
- Further, a firm that hosts blogs, chat rooms or other forums where forex or futures are discussed must supervise the use of those communities. Supervision includes regularly monitoring the content of the site, taking down any misleading posts, and banning users for repeat or egregious violations. Similar requirements apply to Facebook and other sites that allow users to post to the firm's "wall" or other accessible area.
- A firm that uses audio podcasts or videos, whether located on its websites or on YouTube, that make specific trading recommendations or refer to past or future profits must be submitted to the NFA for approval ten days prior to use.
- Lastly, the Release provides that firms should have policies regarding employee conduct, including a requirement that employees notify the employer if they participate in any online trading or financial communities and provide screen names so that the employer can monitor employees' posts periodically.

KEY LEGISLATION & GUIDELINES – IIROC

IIROC Regulatory Notice 11–0349 (Dec. 2011) addresses record-keeping and supervision requirements of communication on social media websites. **IIROC Rule 29.7** is the record-keeping requirement, which requires firms to archive, monitor, and review electronic advertisements, sales literature and correspondence for clients, including communication on social media sites such as Facebook and Twitter. Together, both pieces of legislation require that firms establish written supervisory procedures, and training and monitoring systems for social media communications.

Supervision

Dealer Members must establish policies and procedures that allow them to comply with their supervisory obligations, and protect clients from misleading or false statements on social media.

Static social media content, including a profile, background or wall information on Facebook, LinkedIn and Twitter often must be pre-approved by the Dealer Member. Interactive content includes real-time discussion, and must be supervised to ensure compliance, even though this type of content doesn't require pre-approval.

Recordkeeping

Firms have to keep records (archive) of their business social media activities. IIROC says the device used doesn't matter; it's the communication that matters and is subject to regulatory rules. The content posted on social media sites including Facebook, Twitter and LinkedIn, plus blogs and chat rooms, is subject to applicable legislative and regulatory requirements.

Suitability and Recommendations Requirements

Dealer Members have to be mindful about their regulatory obligations that may be triggered by social media communications. Content must take the suitability requirements into account, which are stipulated in IIROC Dealer Member Rule 1300.

At the most basic level, Dealer Members must implement procedures to monitor or prohibit electronic communications that must follow and comply with IIROC's suitability rules.

KEY LEGISLATION & GUIDELINES – IIROC (Cont'd)

Third-Party Communications and Research Procedures.
IIROC states third-party posts may be attributed to or considered an endorsement by the Dealer Member (firm), and trigger regulatory or legislative requirements, depending on the circumstances. As a result, many firms prohibit their representatives from "liking", sharing or re-tweeting a third-party post.

KEY LEGISLATION & GUIDELINES – ASIA (HK & Singapore)

Hong Kong

The guidance note on Internet, Regulation and Collective Investment Schemes Internet (2013) issued by the Hong Kong Securities and Futures Commission (HKSFC) clarified the regulators approach to regulating firms conduct of internet activities such as mandating that the HKSFC approve advertisements with respect to certain investment scheme types.

The Supervisory Policy Manual (2015) issued by the Hong Kong Monetary Authority addresses risk management of internet banking via social media platforms and mandates adequate security controls to protect data transferred via such platforms.

Singapore

In contrast to the US and even its close financial hub neighbour Hong Kong, Singapore does not have a set of regulations with respect to social media use by Financial Services, though it does have applicable regulations which can be found in the various codes and guidelines.

The scope of the Singapore Code of Advertising practice (2008), issued by the Advertising Standards Authority of Singapore, includes advertisements via “internet services” and “digital communications in every format, design and context including the world-side web” and has a specific section on “Financial Services and Products”.

The Technology Risk Management Guidelines (2013) issued by the Monetary Authority of Singapore (MAS) regulates the use of technology specifically for Financial Services and such technology expressly included the use of the internet and social media platforms.

KEY ENFORCEMENT ACTION

KEY ENFORCEMENT ACTION

Securities Act Section 17

SEC v Profits Paradise

In November, the SEC issued a **notice** (**2014-251)** that it has charged two Indian-based individuals and their investment management firm (Profits Paradise) for their involvement in a high-yield investment scheme where vulnerable investors were exploited through pervasive social media pitches on Facebook, YouTube, and Twitter, and subsequently mis-sold a number of investment plans that guaranteed high returns. Following this, SEC issued updated **Investor Alert** (Nov. 2014) to help investors be better aware of fraudulent investment schemes that may involve social media.

Violation: *Section 17.(a) "It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security based swap agreement (as defined in section 3(a)(78) of the Securities Exchange Act) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—*
(1) to employ any device, scheme, or artifice to defraud, or
(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

PRINCIPLE 3
NIPS Code
ACI Model Code

FCA - Foreign Exchange

Following the recent FOREX probe, the FCA in its final **notices** (**124704**, **114216**, **124491**, **121882**, **186958**) highlighted the lack of control over 'multi-bank and private chat rooms' where traders had used these social media 'chat rooms' to share information about client activity in the main G10 currencies.

So far, chats between traders about products associated with the London and euro interbank have already provided critical evidence for global investigations, resulting in banks being fined more than USD6 Bn to date.

As part of the investigation into foreign currency rate-rigging, regulators expanded beyond work e-mails and instant messages, and reviewed social media communications, including private Facebook account messages and chats.

Violation(s)*: Under Principle 3: Management and Control for failing to take reasonable care to organise and control its affairs properly and effectively in relation to its G10 spot FX trading business; breaches of the ACI Model and NIPS Code pertaining to the confidentiality of information.*

KEY ENFORCEMENT ACTION (Cont'd)

SEC v Netflix Inc.

The SEC Investigation stemmed from an inquiry into the online entertainment firm Netflix's Chief Executive Reed Hastings, who posted on his 'personal' Facebook page stating that Netflix's monthly online viewing had exceeded one billion hours for the first time.

"Most social media are perfectly suitable methods for communicating with investors, but not if the access is restricted or if investors don't know that's where they need to turn to get the latest news."

SEC

"Congrats to Ted Sarados, and his amazing content licensing team. Netflix monthly viewing exceeded 1 billion hours for the first time ever in June. When House of Cards and Arrested Development debut, we'll blow these records away. Keep going, Ted, we need even more!"

Reed Hastings, *Netflix CEO Facebook Posting 3rd July 2012*

This 'announcement' represented almost a 50% increase in streaming hours from Netflix's January 25, 2012 official announcement that it had streamed 2 billion hours over the preceding three-month quarter.

Although Netflix's stock price had begun rising before the posting, it increased from $70.45 at the time of the post to $81.72 at the close of the following trading day.

Hastings's Facebook page had over 200,000 subscribers at the time of the post, including equity research analysts associated with registered broker-dealers, shareholders, reporters, and bloggers however it had never been used to announce company metrics previously.

SEC REGULATION FD

The issue was that Netflix had failed to issue a press release or SEC filing (Form 8-K) with these facts, and Netflix had not previously used this method announce company data.

On this occasion the SEC **did not** pursue an enforcement action.

https://www.sec.gov/litigation/investreport/34-69279.pdf

KEY ENFORCEMENT ACTION (Cont'd)

SEC v Craig

The SEC accused an individual of manipulating the share prices of 2 publicly traded companies by tweeting false and misleading information. The defendant allegedly tweeted rumours that federal law enforcement was investigating a technology company for fraud, and that a biopharmacy company had tainted drug trials results and a federal government agency seized its papers. The investigation confirmed that these tweets had been made from Twitter accounts mimicking established securities research firms with the hoaxes allegedly caused investors to lose more than $1.5m.

SEC v McKeown and Ryan

The case centered around a Canadian couple who use their website (PennyStockChaser), Facebook and Twitter to pump up the stock of microcap companies and then profited by selling shares of those companies. The couple had allegedly received millions of shares of these companies as compensation and then sold the shares around the time their website predicted the stock price would increase enormously (a practice known as 'scalping). The SEC asserted that the couple did not fully disclose the compensation they received for touting stocks and fined the couple $3.7m for profits gained in addition to $300,000 in civil penalties.

KEY ENFORCEMENT ACTION (Cont'd)

SEC v Anthony Fields

In this case an Illinois-based investment adviser was charged with offering to more than $500 billion in fictitious securities through various social media websites. Using forums such as LinkedIn to promote fictitious "bank guarantees" and "medium-term notes.", these postings resulted in interest from multiple purported potential buyers. In its ruling, the SEC asserted that Mr Fields had provided false and misleading information concerning the firms assets under management, clients, and operational history to the public through its website and in SEC filings. He had also failed to maintain required books and records, did not implement adequate compliance policies and procedures, and held himself out to be a broker-dealer while he was not registered with the SEC.

Due to the seriousness of this incident the SEC went on to issue two alerts in an agency-wide effort to highlight the risks investors and advisory firms face when using social media.

- National Examination Risk Alert titled "Investment Adviser Use of Social Media" and
- Investor Alert titled "Social Media and Investing: Avoiding Fraud" prepared by the Office of Investor Education and Advocacy.

SEC v Mark A. Grimaldi - Twitter

In 2014, the SEC charged Grimaldi with using his popular newsletter, The Money Navigator, as well as his Twitter presence to present high-flying investment performance. The charges included making false claims about investment advice to inflate his success, including the allegation that he "cherry-picked highlights but ignored less favorable recommendations and other data that would have made the facts complete".

In one "materially misleading" statement, Grimaldi told investors that one of his funds was ranked No1 out of 375 in a group tracked by Morningstar. The SEC said Grimaldi highlighted the fund's performance during only a one-year period, and that it "had a poorer relative performance during other time periods". The SEC also said that Grimaldi used Twitter to claim "responsibility for model portfolios in his newsletters that 'doubled the S&P 500 the last 10 years.'" Grimaldi apparently neglected to mention that for the first three of the 10 years, he had no involvement in the model portfolio performance. In settlement, Grimaldi agreed to a penalty of $100,000 and to maintain an independent compliance consultant for three years.

KEY ENFORCEMENT ACTION (Cont'd)

FINRA v Jenny Quyen Ta – Twitter

FINRA disciplinary action taken against Jenny Ta, the founder of California-based Titan Securities, included a fine of $10,000 and suspension from association with any FINRA member for a full year, through Dec. 5, 2011. Ta had failed to inform a registered firm principal that she had a Twitter account that she used to tout a particular stock (AMD), the postings FINRA deemed "were unbalanced, overwhelmingly positive and frequently predicted an imminent price rise, and that Ta had also failed to disclose that she and her family members held a substantial position in the stock.", in this case more than 100,000 shares.

FINRA also noted that she had created two websites, jennyta.com and JCConcordeSecurities.com, "which included representations about her career accomplishments," for which she had never obtained approval from a registered firm principal for these undisclosed websites.

FINRA v William Hicks Jr. – You Tube

In this case it was alleged that Hicks had shared advertising and sales literature to the public in YouTube videos; invitations to seminars and workshops; and letters concerning, among other things, bonus incentives.

FINRA felt that Hicks had presented Equity Indexed Annuities (EIAs) favorably in comparison to other annuity types, but that he failed to adequately describe the risks and limitations of EIAs — among the alleged deficiencies were the failure to satisfactorily address: lack of EIA liquidity due to surrender penalties; guarantees associated with EIAs are subject to the ability of the issuer to pay the claims; limits posed by participation rates and interest rate caps; and the merits of other annuity types versus EIAs.

In addition it was noted that Hicks had posted videos containing customer testimonials on YouTube without making the necessary disclosures. Finally, Hicks allegedly failed to file advertising and sales literature which discussed registered investment companies within 10 business days of first use or publication. FINRA imposed a $10,000 fine and a twenty-business-day suspension from associating with a FINRA member.

KEY ENFORCEMENT ACTION (Cont'd)

FINRA v Charles Matisi's – Facebook

This case centred around a 2012 Facebook post made by Charles Matisi, a broker with Massachusetts Mutual Life Investor Services, in response to an article by Barron's (Financial Investment News magazine) where he defended the stock of Arena Pharmaceuticals Inc's a drug company. In responding to the article which cautioned against buying stock too high, given some of the hurdles the company had faced to bring a key weight loss drug to market. Matisi stated that "There's no safer weight loss drug".

Although there was no direct mention of the drug Belviq nor the fact that his firm had recently won approval for this weight-loss drug FINRA felt this statement was "not fair and balanced," and had omitted key details, including the fact that he and 33 of his customers already held Arena shares. In settlement he was given a $5,000 civil fine and 10-day suspension.

FINRA v Jon Hickman - Twitter

In this case Hickman settled charges that he failed to disclose his ownership of securities that were the subject of posts he made on Twitter and that such posts failed to be fair or balanced because they did not disclose risk or contingent factors and failed to provide a sound basis for evaluating certain facts discussed therein. FINRA fined Respondent $15,000 for the incidents and imposed a ten-day suspension from association with any FINRA member.

KEY ENFORCEMENT ACTION (Cont'd)

Europe

Belgium: Option-case (2011): Employee was rightfully dismissed for having criticized his employer on Facebook. When an employee makes use of a social network and identifies himself on such social network as a member of a company's personnel, he has to refrain from acting or making statements in a way which could either be disloyal or detrimental to the concerned company.

Paris Criminal Court (2012): The trade union's delegate of a company posted an abusive message on the Facebook page dedicated to the company's trade union. As the management of the employer was clearly identifiable in the post, the employee was criminally liable.

Hong Kong

SFC v. Lo Kam Chung: The Hong Kong Securities and Futures Commission ("SFC") fined an individual for conducting a securities advisory business via Facebook without a license. In the accompanying press release, the SFC made clear that the provision of securities advice "irrespective of the medium" must be licensed.

While the case does not directly address social media, the press release appears to indicate the SFC's "technology neutral stance," i.e., that it is the responsibility of the regulated market players to devise means to comply with the relevant requirements and principles.

https://www.sec.gov/litigation/investreport/34-69279.pdf

COMPLIANCE CONSIDERATIONS

COMPLIANCE CONSIDERATIONS

Establish a clear, unambiguous Social Media Policy

- Engage SME's to perform a social media risk assessment and goals for social media usage (identify all current social media activity and infrastructure used (work v private devices);
- Review 'Terms of Use/Privacy Policies applying to firm through its use of social media and limit use as appropriate.
- Refine Privacy Policy to ensure firm discloses how information regarding customers will be obtained through social media channels and used by the firm.
- Notify the public about the communication channels that you intend to use to disseminate material, non-public information, including the types of information that may be disclosed through social media (use personal social media accounts of company officers to distribute information);
- Include approval processes for posting information;
- Treat social media governance as a component of IT governance overall; and
- Provide specific examples of acceptable and prohibited uses of social media.

Employ tools that enable flexibility and quick response to change

- Deploy solutions that can integrate with existing communications infrastructure and that are capable of evolving and accommodating developments in social media technologies;
- Use tools that can automate policy enforcement in order to speed response to any regulatory inquiries (an email archiving solution also must be able to capture posted social media content for long-term retention and eDiscovery, should a regulatory request for information arise); and
- Continue to monitor regulatory and legal precedents in order to inform policy change.

Provide ongoing training and policy refinement

- Train employees on best practice, internal polices (consider work and non work related) and industry regulations;
- Engage with users for their feedback; and
- Engage with industry peers to leverage experience.

Cost Implications

Employee Training;
Technology Investment;
Archiving 'eligible' content;
Compliance Monitoring personnel

COMPLIANCE CONSIDERATIONS

Monitoring of electronic communications (e-comms) and voice communications are becoming increasingly important components of a financial services firms effective surveillance programme.

One of the key challenges faced is how to refine the Lexicons which are used to identify and target communications of interest from the enormous pools of data to hand.

The consequence of high numbers of false positives, generated by lexicon based surveillance tools, can lead to surveillance functions having to expand as they deal with the significant increase in work effect to clear down alerts. This can also give rise to the question was to whether analysts/reviewers have the requisite skills and experience to identify and 'connect the dots'.

This monitoring challenge becomes even more difficult when you take into account other factors such as:

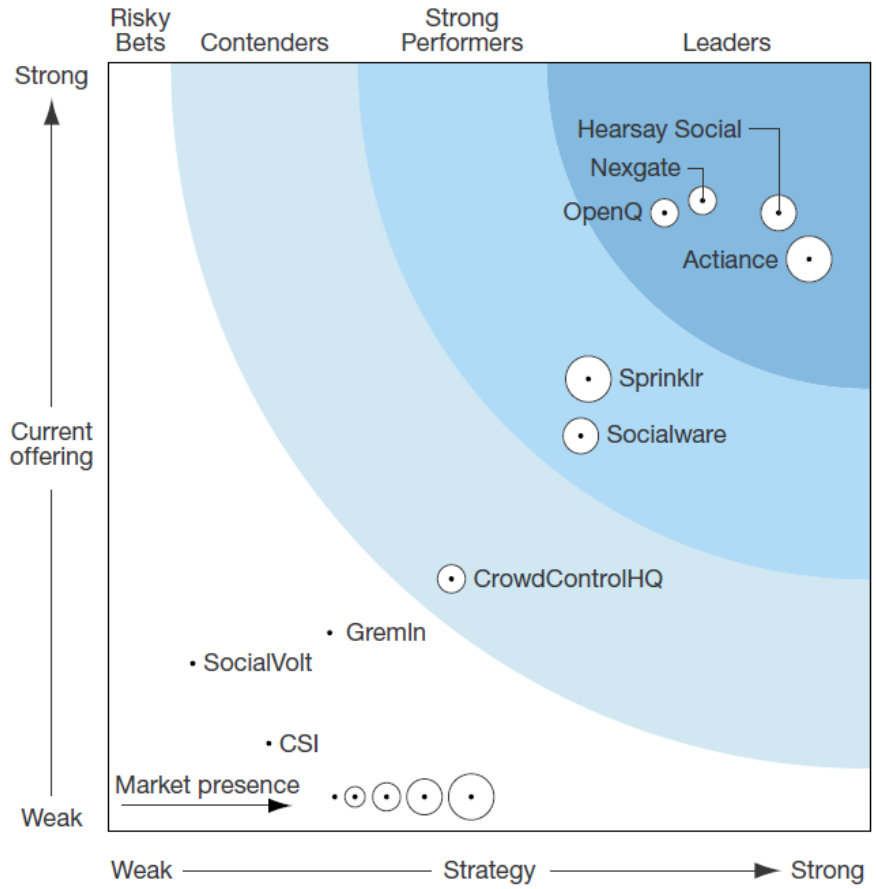
- Social networking sites, such as Facebook, offer no native archiving functionality, making it difficult to comply with Regulatory Notice 07-59 which requires review "by a supervisor of employees' of incoming, outgoing and internal electronic communications."
- Native archiving functionality offered by unified communications and other real-time communications tools is rarely able to provide a granular breakdown of conversations by persons, key phrases, and timeframes, which are essential for compliance and eDiscovery requirements.
- This is further complicated by the various technology platforms which may be used in conversations e.g. Conversation moving from instant messenger to BlackBerry.

COMPLIANCE CONSIDERATIONS

Possible solutions include:

- Moving the focus away from pure Lexicon based searches to analysing the strength of relationships between individuals internally (public/private-side) and externally and in doing so predicting the likely flow of information.
- Organisations should consider deploying a central archiving system that permits easy review of posted messages and detailed analysis of electronic conversations, including file downloads both internally and externally, complete with an audit trail of the auditor reviewing the information. Ideally this information should also include details of users interaction such as who joined a conversation, when they joined, when they left, any disclaimers shown (e.g., at the beginning of an IM conversation), call detail records, etc.

TECHNICAL SOLUTIONS



Source: The Forrester Wave: Social Risk And Compliance Solutions, Q2 2014 (May 7 2014)

CATEGORIES

Current Offering

Reflects the strength of each vendor offering, including its capabilities to deliver social network and application support; software administration; workflow management; posting; syndication, and team collaboration; risk and compliance enablement; control monitoring and enforcements; security and account protection; risk monitoring and remediation; archiving; dashboards and reporting; end-user experience; scalability; and global reach.

Strategy

Measures viability and execution of each vendor's strategy, which includes the company's technical strategy and vision, thought leadership and role support, financial resources to support growth, consulting capabilities, and customer reference feedback.

Market Presence

Represents each vendors presence in the Social Risk and Compliance market, based on total number of customers and employees.


THANK YOU
for your attention!