YOUR "NO-TEXTING" POLICY IS NOT DEFENSIBLE

INTRODUCTION

Texting is essential for financial services firms to enhance client engagement and loyalty. Customers demand communicating on their terms and texting has emerged as a primary form of business communication. It has ushered in new ways to collaborate with both clients and coworkers.

Text messages are governed by recordkeeping and oversight rules. However, many financial organizations attempt to circumvent text archiving requirements by implementing a "no-texting" policy.

This white paper examines the risks of prohibiting text messaging for regulatory oversight.

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RISKS & CHALLENGES

Prohibiting financial advisors from texting does not stop customers from initiating text conversations. Once a client initiates a text conversation, it constitutes a business record from a regulatory standpoint.

The advisor now faces a dilemma: Respond to the text and risk compliance ramifications, or neglect the text and potentially jeopardize the client relationship. Transferring the conversation to a more compliant channel, such as email, poses its own risks when time is of the essence.

When a business opportunity rests in the balance, advisors will inevitably respond to a text to continue the conversation, violating the organization's "no-texting" policy.

Advisors simply cannot function and compete without text messaging. Against corporate policy, advisors are known to use applications like WhatsApp and WeChat, creating major compliance challenges when their messages are not archived.

Firms face intense pressure to continually adapt their governance policies and procedures to keep pace with legal, regulatory, and risk requirements, especially in mobile environments. Increased text messaging and regulatory pressures are placing firms at high risk of enforcement actions.

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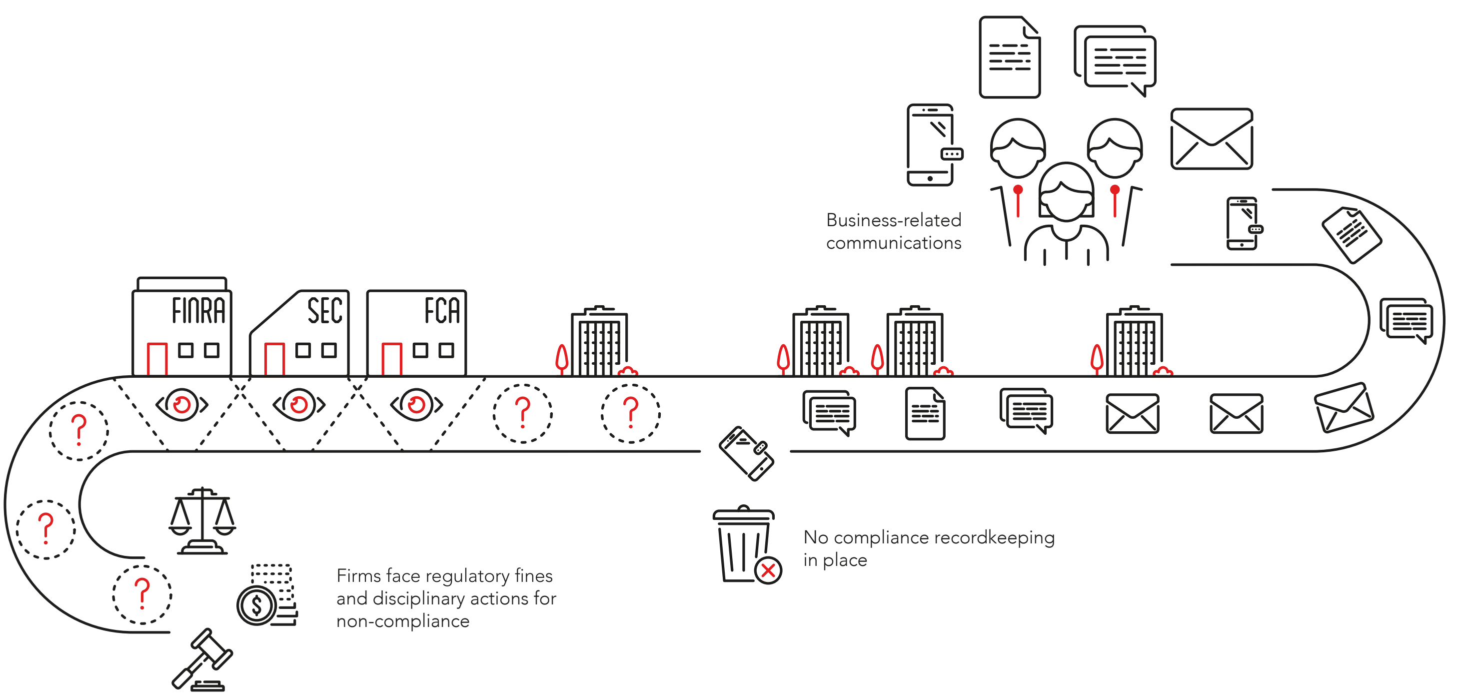

REGULATORY OVERSIGHT OF TEXT MESSAGING

The Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), Patriot Act, and Gramm-Leach Bliley Act (GLBA) – among many other regulations – impose particular requirements on financial services organizations.

FINRA, for example, sets various requirements on capturing, monitoring, and archiving broker communications, and it demands a supervisory review process.

In 2017, FINRA released Regulatory Notice 17-18[1]: Guidance on Social Networking Websites and Business Communications, which reiterated the requirement that financial firms must archive business-related texts the same way they archive email or other written communication:

> ...with regard to its business through a text messaging app or chat service [a firm] must first ensure that it can retain records of those communications as required by SEC Rules 17a-3 and 17a-4 and FINRA Rule 4511. SEC and FINRA rules require that, for record retention purposes, the content of the communication determines what must be retained.

Firms failing to abide by these measures risk numerous non-compliance penalties, regulatory disciplinary actions, damage to their reputation, fines, and more.

A growing number of regulatory actions over employee texting in the last three years has put compliance officers on high alert:

In 2016, FINRA fined a Georgia-based firm $1.5 million for, in part, failing to retain and archive approximately 1 million text messages sent using firm-issued devices. The firm had a "No-Texting" policy that certain employees violated.[2]

- In 2017, FINRA fined a Texas-based broker for engaging in unapproved securities-related text communications with two customers, violating company policy.[3]
- In 2018, FINRA fined an advisor from an Iowa-based broker who used instant messages and texts to communicate with at least 14 customers to conduct securities business, which violated the firm's written electronic communication policy and resulted in the firm failing to preserve required records.[4]

The foregoing cases indicate that advisors are texting with their clients over prohibited channels, ignoring no-texting policies, and violating their firm's written procedures.

Policies prohibiting texting do not protect financial firms from fines and loss of shareholder goodwill. With greater focus on non-compliant texting, it's only a matter of time before regulators start imposing more fines.

CONCLUSION

The financial services industry is shifting its primary means of communication from email to text. Forward-thinking organizations can benefit by investing in a compliant text messaging solution to increase customer engagement and collaboration across their business.

Text for Global Relay Message is a fully integrated, secure, and cost-effective solution. All client-advisor text communications are seamlessly archived in Global Relay's state-of-the-art archive, eliminating the complexity and risk associated with text messaging.

[1] https://www.finra.org/rules-guidance/notices/17-18

[2] https://www.finra.org/sites/default/files/fda_documents/2016050194501_FDA_SL677820.pdf

[3] https://www.finra.org/sites/default/files/fda_documents/2016048603001_FDA_DM932748.pdf

[4] https://www.finra.org/sites/default/files/fda_documents/2014039169602%20Farrukh%20S.%20Kazmi%20CRD%202855915%20Complaint%20jm.pdf

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20 YEARS IN THE CLOUD

Global Relay operates at the intersection of two of the biggest technology trends today: cloud and big data. Global Relay manages petabytes of mission-critical data for some of the world's largest and most influential organizations, including 22 of the top 25 global banks. From seven offices across the world, Global Relay delivers its services to over 23,000 customers, with a focus on government, financial services, and other highly regulated industries.

In 1999, Global Relay developed one of the first cloud computing services to address the growing need to manage corporate email. Since then, as organizations have adopted new methods of communication, as data volumes have grown exponentially, and as regulatory and corporate recordkeeping and supervision requirements have become increasingly strict, Global Relay has continued to innovate to help its customers manage, control, and profit from their data

For more information on Global Relay Message:

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