

Social media as a compliance risk for financial services: Exploring emerging risks and finding solutions to mitigate harm

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ABSTRACT

A recent industry report by Global Relay revealed that 55 per cent of compliance executives consider social media to be an emerging compliance risk. In this paper, Rob Mason explores the four key challenges that social media presents to financial services: market risk, marketing and advertising risk, record-keeping risk and consumer harm. This paper unpicks regulatory approaches across the globe to understand how regulatory bodies are adjusting existing guardrails to acknowledge and mitigate social media risks, as well as how regulators are enforcing new expectations — from marketing rules to warnings for 'influencers'. Finally, this paper sets out the critical steps companies should consider to comply with the emerging social media regulatory landscape and prevent harm to business, the consumer and the wider economy.

Keywords: social media risk, regulatory compliance, records and information management, marketing rules, consumer duty

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INTRODUCTION

The importance of compliant communication within financial services is well established. In a sea of material non-public



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information (MNPI) and a landscape where market movement is more prone to turbulence than ever before, it is critical that financial institutions have a clear grasp on how their employees are communicating: with each other, with customers, with prospects and with the wider public.

Social media has begun to emerge as a critical risk to compliant communications. Where financial organisations were finally grasping the concept of record-keeping and surveillance rules for communication channels such as e-mail, text, WhatsApp, Slack or ICE chat, social media presents new, unique challenges.

As an example, LinkedIn now has over 830 million users across the globe,¹ each using their profiles to network with others, build relationships and look for jobs. With platforms such as LinkedIn, companies are, however, starting to see a blurred line where personal communications can become business communications, with little oversight from the compliance team.

A 2024 report by compliance communication vendor Global Relay found that 55 per cent of compliance teams now consider social media to be a compliance risk.² This risk is posed by elements, including misleading marketing, the discrete sharing of sensitive information, sudden market turbulence or the inability to accurately preserve business communication.

Whichever factor might pose the risk, there is no doubt that social media is a fast-growing and, so far, overlooked compliance risk for financial institutions. According to Statista, 5.17 billion people (or 63.7 per cent of the world's population) are social media users in 2024, up from 4.9 billion in 2023.³ Forbes reports that 77 per cent of businesses use social media as a platform to market to consumers.⁴ This accounts for a vast audience of consumers, prospects and businesses, all of whom are exposed to, and potentially perpetrating, social media compliance risks, whether from misleading

influencer marketing, market-moving social posts or financial advice received through direct messages.

This paper explores the emergence of that risk, the growing regulatory response, and the steps firms could take to mitigate harm.

THE THREE KEY RISK AREAS OF SOCIAL MEDIA IN FINANCIAL SERVICES

The emergence of social media across the gamut of financial services has caused regulators to consider (or reconsider) regulatory guardrails to mitigate harm.

Some regulators have taken direct action and created focused guidance targeting the potential risks of social media head-on. Others have looked to 'modernise' existing regulation to include direct mention of social media within existing guidance. We have also seen some regulators address social media within enforcement action, using overarching, general principles of regulation. Regulatory approaches differ depending on jurisdiction but also on the angle from which they assess social media to be a compliance risk. As yet, regulators have not aligned on how laws will be applied nor how new rules will be defined. Indeed, there is still thought and research required on how some issues — personal social media profiles, for example — will be tackled alongside existing regulatory frameworks.

At a high level, regulators appear to approach social media harms in the context of three key pillars:

- Market and economy risk.
- Marketing risk and consumer risk through misleading promotions and bad advice.
- Record-keeping risks and the potential for off-channel communications.

Each pillar exposes social media as a distinct risk, so each should be considered in turn.

Market disruption and economic risk

The power of social media as a risk to financial markets was first exposed by now-owner of X (formerly Twitter), Elon Musk. In September 2018, the US Securities and Exchange Commission (SEC) charged Elon Musk with securities fraud for ‘a series of false and misleading tweets about a potential transaction to take Tesla private’.⁵ Musk had tweeted to some 22 million followers that he would take Tesla private, alongside a number of other false statements. The tweets saw Tesla’s stock price jump by 6 per cent and caused ‘significant market disruption’.

Also in 2018, entrepreneur and celebrity Kylie Jenner instigated a significant market movement with comments made about social media platform Snap (formerly Snapchat). Jenner tweeted to 24.5 million followers:

Sooo does anyone else not open Snapchat anymore? Or is it just me ...

Shares in the social media platform’s parent company, Snap Inc., dropped by 7 per cent in the following trading session, knocking US\$1.3bn⁶ from the company’s market value. While not misleading, the market swing showed the increasing risk of celebrity endorsement when combined with the increased reach of messaging on social media.

In February 2024, the SEC issued charges similar to those against Musk, this time to former Alfi chief executive officer (CEO), Paul Pereira, who was found to have made ‘materially false and misleading statements on social media’ in a bid to ‘boost the now defunct company’s stock price’.⁷

Social media-based market disruption is not always associated with celebrity endorsement or admonishment, however. While celebrity social messaging may play a role in market disruption, social media poses

myriad market risks, from influencer, to the ability to rapidly spread information or disinformation worldwide. This was made clear in 2022 with the collapse of Silicon Valley Bank (SVB), the second-largest bank failure in the history of the USA.

In the first Twitter-fuelled bank run⁸ of its kind, SVB collapsed in the space of two days, caused by mass panic on social media that saw backers removing funding ultimately leading to the bank’s demise.

In a post-crash review of the supervision and regulation of SVB,⁹ the Federal Reserve’s Vice Chair for Supervision, Michael S. Barr, commented that:

The combination of social media, a highly networked and concentrated depositor base, and technology may have fundamentally changed the speed of bank runs.

This has been broadly echoed by the US Office of the Comptroller of the Currency (OCC) that, in its Semiannual Risk Perspective for Spring 2023,¹⁰ acknowledged how the new existence of ‘real-time money movement capabilities’ paired with the ‘use of social media and other digital channels to accelerate communications’ can expose financial markets to rapid deposit outflows. In its acknowledgment of social media as a market risk, the OCC suggested that as a means of mitigating or preventing market fallout, it could be prudent for banks to:

Monitor digital channels for unusual or higher-volume activities, prepare and train call center staff, and monitor social media for shifts in sentiment.

Ultimately, the combination of digital finance and instant withdrawals, paired with the ability to communicate market information instantaneously, exposes social media as a critical market risk.

Marketing rules, bad advice and influencers

Social media risk is especially prevalent in the advertisement and promotion of financial products, services and solutions. Financial organisations are subject to a host of marketing, promotional and advertising rules. As companies seek to market their products more aggressively and on new channels, the compliance risk surrounding these rules increases significantly.

SEC's marketing rule

The most aggressive — and most aggressively enforced — rule around financial promotions is the SEC's Marketing Rule. The Rule came into effect in November 2022¹¹ and requires firms to have oversight of how their employees communicate with customers and prospects through advertising campaigns, social media and websites. It notes that:

Social media has become an integral part of business communications [...] We recognize that electronic media (including social media and other internet communications) and mobile communications play a significant role in current advertising practices.

The Rule was initially criticised for being unclear, but, despite criticism, the SEC confirmed its commitment to compliance in a series of risk alerts. The first, issued in September 2022, sets out the criteria for examinations.¹² The second, published in June 2023, reaffirmed the SEC's commitment to the Rule and provided additional 'areas of emphasis', including encouraging companies to:

Review their websites and other marketing materials for compliance with the Marketing Rule, including ensuring that

they have a reasonable basis for believing they will be able to substantiate material statements of fact and that their performance advertising, including extracted performance and hypothetical performance, complies with the requirements of the Marketing Rule.¹³

Finally, the SEC announced that the Marketing Rule would be a key regulatory focus area for 2023/2024 in the regulator's 2024 examination priorities.¹⁴

This was quickly proven when, in September 2023, nine registered investment advisers were charged US\$850,00 in combined penalties for advertising hypothetical performance to the general public 'without adopting and/or implementing policies and procedures required by the Marketing Rule'.¹⁵ Critically, two out of these nine firms had wrongly advertised hypothetical performance on social media channels.

In April 2024, the SEC further charged five investment advisers for Marketing Rule violations.¹⁶ One of these companies had 'disseminated material on its public website and social media sites that constituted advertisements and contained false and misleading statements'.¹⁷

The SEC's focus on the Marketing Rule is a definitive example of how social media poses compliance risks regarding promotions and advertisements, which regulators are fast turning their focus towards. These cases also expand the net of compliance to ensure that they are capturing and monitoring marketing messaging, as well as the communications of traders or broker-dealers.

Misleading claims and cryptocurrency focus from FCA

The UK's Financial Conduct Authority (FCA) has highlighted social media risk most pointedly with regard to the sharing of false financial information through social media channels. This is particularly

true regarding cryptocurrency promotions, although the FCA has been proactive in addressing advertising on social media more generally too.

In July 2023, the FCA introduced ‘tough new rules’¹⁸ for the marketing of crypto-assets. The new rules introduced an obligation to display risk warnings, ensure that adverts are ‘fair, clear and not misleading’ and require crypto companies to ‘ensure that people have the appropriate knowledge and experience to invest in crypto’. In particular, the FCA highlighted the dissemination of crypto promotions on social media as a risk to compliance.

In March 2024, the FCA published FG24/1: finalised guidance on financial promotions on social media¹⁹ with a view to clarifying how financial promotions should be communicated on social media. The final guidance followed a Consultation in 2023 that noted ‘social media has become an increasingly vital part of firms’ marketing strategies’ but that ‘poor quality financial promotions on social media can lead to significant consumer harm.’²⁰ While the FCA has tackled social media risk in previous guidance (eg FG15/4), this is the most up-to-date guidance from the UK regulator.

Among other things, the FCA clarified within FG24/1 that:

Unauthorised persons, such as social media influencers, who promote a regulated financial product or service without the approval of an appropriate FCA-authorised person may be committing a criminal offence.

In effect, the guidance reminds companies that they must adhere to existing, relevant financial promotion rules, including, but not limited to, the Consumer Duty.²¹ As an example of how regulators are cognisant of social media risk, FG24/1, however, explicitly sets out how social media should be used within those rules. It ‘does not

create new obligations for firms. Rather it indicates how firms might approach complying with their existing regulatory obligations’.

The guidance reminds companies that financial promotions ultimately should be ‘fair, clear and not misleading’, which should apply across all promotions, social media or otherwise. Owing to the wider audience reach and shareability of social media promotion, this is arguably a harder bar to meet. The FCA also asks firms to consider whether social media is always the most suitable means of promoting financial products and reminds them to use appropriate risk warnings if it is used.

Social media as ‘advice’ under MiFID II

Social media poses a risk to consumers directly when considered as a communication channel through which financial advice can be delivered. This has been addressed most overtly by the European Securities and Markets Authority (ESMA), which, in July 2023, issued Supervisory Briefing (ESMA35-43-3861)²² to clarify the definition of ‘advice’ in the context of the Markets in Financial Instruments Directive II (MiFID II).

Within the Supervisory Briefing, the ESMA posed the question: ‘should recommendations made through the Internet, social media, etc be considered as made exclusively to the public?’. The Briefing clarified that:

A recommendation issued, even exclusively, through distribution channels, such as internet, could qualify as a personal recommendation. Therefore, situations in which, for instance, email correspondence is used to provide personal recommendations to a specific person, rather than to address information to the public in general, may amount to investment advice.

The Briefing expands this list of channels to include other digital formats:

Therefore, a recommendation concerning financial instruments made through internet websites, investment apps, and/or social media (including through (f) influencers) could, in certain instances, be regarded as a personal recommendation and not as issued exclusively to the public.

In essence, the Supervisory Briefing makes clear that recommendations for financial products made over social media may constitute ‘advice’ and should therefore be treated as such for the purposes of MiFID II.

The rise of the ‘finfluencer’

A growing compliance risk, outside financial organisations providing misleading information directly, is from ‘finfluencers’. Finfluencers, as the name would suggest, are financial influencers who use their following and perceived industry knowledge to disseminate information and ideas across the financial services industry. While this is often harmless, there are increased instances of financial regulators acting where ‘finfluencers’ use social media platforms to share unauthorised financial promotions.

In the UK, in 2024, the FCA brought charges against nine individuals who used Instagram accounts to provide financial advice when they were not authorised to do so. The leaders of the operation used their own ‘finfluencer’ Instagram accounts to advise on the high-risk practise of buying and selling contracts for difference (CFDs). The finfluencers then paid known, nonfinancial influencers to promote the finfluencer accounts on their personal Instagram accounts. The FCA charged all involved individuals with ‘issuing unauthorised communications of financial promotions’.²³

As far back as 2022, the SEC charged eight social media influencers who were involved in a US\$100m securities fraud scheme, in which they used social media platforms to manipulate exchange-traded stocks.²⁴ More recently, the Financial Industry Regulatory Authority (FINRA) fined M1 Finance US\$850,000 for paying social media influencers to post social media posts on the company’s behalf that ‘were not fair or balanced, on contained exaggerated, unwarranted, promissory, or misleading claims’.²⁵ Among the misleading social media posts, one influencer stated ‘it is a general principle that anyone who starts a Roth IRA [individual retirement account] early on let’s say in their 20s will become a millionaire by the time they’re 60’. Another posted a video in which they said that customers ‘can pay [margin loans] back at any given time ... there is no set time period’. In fact, investors were not entitled to any extension of time to meet the company’s margin requirements, and the company was able to increase the maintenance margin requirement on the account at any time without contacting the investor.

Commenting on the fine, FINRA Executive Vice President and Head of Enforcement, Bill St. Louis, said:

As investors increasingly use social media to inform their financial decisions, FINRA’s rules on communicating with the public are especially critical. FINRA will continue to consider whether firms are using practices and maintaining supervisory systems that are reasonably designed to address the risks related to social media influencer programs.

These are interesting instances where firms are not directly misusing social media themselves but are instead paying others with social media presence to do so, implicating themselves and the ‘influencers’, in the process.

Record-keeping risks and blurred lines

One of the most critical areas of compliance risk for social media is with regard to record-keeping rules. Financial institutions in all jurisdictions are under obligation to capture, retain and monitor business communication channels to meet diverse record-keeping regulations, from SEC Rule 17a-4, to MiFID II, to FCA Handbook SYSC 9.1.

The use of social media for business communication is fast becoming a record-keeping compliance risk for myriad reasons.

- Businesses may not know individuals are using social media to conduct business, so are not capturing that information.
- There is a fine line between a business conversation and a personal conversation.
- Social media accounts are often created using personal email addresses and contain personal information, creating a difficult distinction between what a company may and may not access, as well as an administrative burden.
- The very nature of social media is its real time and fleeting nature; distinctly at odds with regulatory obligations of supervision and approvals.

A report by Global Relay, *Data Insights: Compliant Communications 2023*,²⁶ analysed the data of over 10,000 financial institutions to assess what communication channels they were capturing business data from. The report found that 33 per cent of financial institutions were already capturing the LinkedIn data of its business and employees. A more recent report by the same organisation found that 27 per cent of companies are struggling to capture communications data from all channels in 2024, increasing from 23.1 per cent in 2023.²⁷

It is clear that financial institutions are becoming cognisant of the record-keeping risks that social media poses, and regulatory messaging would suggest that the same is true for global regulators.

Modernising record-keeping rules to capture social media

The SEC's Rule 17a-4 outlines the requirements for data retention, indexing and accessibility for regulatory entities that deal in the trading or brokering of financial securities. The Rule obliges companies to ensure the retention and preservation of all transactions and business records, including all associated communications. Until 2023, Rule 17a-4 had not been updated for 25 years.

In October 2022, SEC Chair Gary Gensler issued a Statement on Final Rule Amendments to the Electronic Record-keeping Requirements²⁸ announcing broad changes to 'modernise' electronic record-keeping requirements. Among other things, Rule 17a-4(b)(4) requires that broker-dealers retain 'originals of all communications received and copies of all communications sent by the broker-dealer relating to its "business as such" for at least three years'. FINRA guidance²⁹ notes that 'this would include emails, instant messages, and business-related social media posts'.

The SEC's modernised record-keeping rule, therefore, requires companies to capture and preserve social media, representing clear acceptance of the risks that social media communications can present. While the regulatory obligation to capture and preserve business communication has been modernised, the record-keeping requirements remain broadly the same. What has changed significantly, however, is the increased willingness of regulatory organisations to issue enforcement actions to companies that fail to meet these modernised rules. In September 2024 alone, the SEC issued 29 companies for record-keeping failures — adding to existing fines of over US\$3bn in the last four years alone.

Record-keeping obligations for social media by proxy

Where some regulations directly require companies to capture social media

communications, others implicitly oblige companies to preserve social media through pre-existing regulatory frameworks.

Under the aforementioned Marketing Rule, for example, there is a requirement for advisors to make and keep certain books and records relating to investment advice given. The Rule is not prescriptive about what channels these communications take place via but says:

The recordkeeping rule requires advisers to retain documents that support the inclusion of predecessor performance in an advertisement, including a requirement to make and keep originals of all written communications received and copies of all written communications sent by an investment adviser relating to predecessor performance and the performance or rate of return of any portfolios.³⁰

It follows that if investment advice has been given through social media channels, companies will need to both capture and preserve those communications to meet Marketing Rule requirements.

This sentiment extends to record-keeping rules that exist within fiduciary rules and expectations around the conduct with which companies issue financial advice. In the USA, Regulation Best Interest (Reg BI) under the Securities Exchange Act of 1934³¹ came into force in 2020. It applies to broker-dealers, investment advisers and associated persons and establishes a ‘best interest’ standard of conduct for companies to follow when interacting with consumers.

RegBI looks at all facets of consumer interactions, including the interactions that need to be captured and preserved to meet record-keeping requirements. It is another example of how regulators are managing social media risk under the veil of existing regulation. RegBI states:

You must meet new record-making and record-keeping requirements with respect to certain information collected from or provided to retail customers in connection with Regulation Best Interest. [...] You must retain all records of the information collected from or provided to each retail customer for at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated.

Put simply, applicable entities must capture and preserve the conversations they are having with customers. By proxy, if those conversations are happening on LinkedIn, WhatsApp or social media channels, companies must establish a way to connect this communication data to a compliant archive.

This is also true, as above, in relation to MiFID II. Where the ESMA has made clear that communication through social media can constitute ‘advice’ for the purpose of MiFID II, it is likely that record-keeping requirements to preserve records of business communications expand to making records of communications made through social media channels.

OVERCOMING THE CHALLENGE OF SOCIAL MEDIA

The challenges presented by social media are nuanced and far-reaching. Key issues include, but are not limited to:

- Knowing the channels on which employees are communicating for business and preserving those communications.
- Understanding the data implications of capturing personal social channels, even if also being used for business purposes.
- Ensuring that employees are aware of the policies that apply to all social media platforms, and ensuring that these policies are updated as new channels emerge.

- Capturing communications data in such a way that it is complete, structured and makes sense in the event of an investigation.
- Ensuring that you are monitoring social media communication across departments, including from the marketing team as well as traditional client-facing teams.
- Similarly monitoring social media communication and messaging industry-wide and externally to monitor for market movements, influencer messaging and other marketing.
- Interpreting potentially unclear regulation to understand how it could apply to social media and other emerging communication channels.
- Knowing what to do in the event that social media is used in a non-compliant way.

When considered against the backdrop of the existing burden on compliance executives, the risks of social media add a large and likely unwelcome administrative burden. Overcoming these challenges is not necessarily easy, but there are certain steps firms could take to mitigate harm and identify emerging risk from the outset.

Four steps to mitigate social media risk

Create clear policies and communicate them effectively

In order for people to follow the rules, they need to understand the rules. This is where clear, effective policies become an essential first step for compliance. Compliance teams should take time to create social media use policies that are free from jargon, easy to follow and clearly set out what is and is not permitted with regard to social media for business communication.

These policies should be tailored for different roles and responsibilities. For instance, the way that a trader is permitted to use social media will differ significantly from

the way that a marketer is permitted to use social media.

Where possible, policies should be broken down to cater to the intricacies of different channels of communication. An individual's use of LinkedIn, for example, may be more exposed to risk than their use of Instagram. If it is your company's proclivity to employ the use of influencers to promote financial products, ensure that you have a watertight understanding of the rules that apply and have translated those rules so that they are easily interpreted and understood by relevant teams.

Whatever policy that compliance teams choose to adopt, these policies must be clear to follow but also communicated effectively so that employees know that policies exist. If it is a company's policy to ban social media at work, for example, employees will need to be made aware of this from inception. Training could be done through routine presentations and internal communication, but compliance teams may see greater reward from injecting energy and real-life examples into training sessions. Nothing contextualises or reinforces a policy more than storytelling.

Training should be consistent and carried out regularly, so employees are reminded of their obligations and made aware if the rules change. Teams could consider the use of regular attestations from employees to confirm that they understand and are adhering to the social media policy.

Use a compliance technology solution to capture and archive communication from critical social media platforms

Where compliance teams opt to utilise a policy that allows employees to use social media at work or for business purposes, then it may be prudent to implement compliance technology solutions that capture communications data from social media channels and connect it to a compliant archive. The use of

such technology allows the compliance team to not only capture communication data but also to monitor those communications to assess whether policies are being adhered to.

Some technology vendors offer data connectors or tailored application programming interfaces (APIs) that will allow compliance teams to capture communication data from source and deliver it securely into an archive. As well as ensuring companies meet record-keeping requirements through the preservation of communications data, more advanced compliance technology will structure communication data in a way that allows teams to search through data such as LinkedIn messages or tweets and build a useful picture of compliant or non-compliant behaviour. This technology may also allow for eDiscovery and the implementation of instant legal holds in the event of investigation, audit or regulatory query.

For companies that do opt to ban or block social media channels, compliance technology offers an effective, positive solution that allows the compliance team to enable compliant communication on convenient channels, instead of being seen as a blocker to business communication. Ultimately, employees want to communicate on the channels that their customers or prospects are using and are more likely to comply with policies if those policies are enabling, rather than disabling.

Monitor social media communications or related lexicons

Recent developments in artificial intelligence (AI) mean that some technology vendors will also offer AI-enabled surveillance tools. Instead of enacting manual searches, AI offers a proactive approach to compliance, generating automated alerts in the event that risks are flagged.

Lexicons should be developed for different social media use cases and regulatory obligation. For instance, communications

around misleading promotions will look markedly different from the sharing of material non-public information (MNPI). Build an effective lexicon list and engage your AI solutions on clean, structured data to avoid an overload of false positives.

This technology could also be of benefit to companies that have opted to ban or block social media channels for business purposes, as they can be trained to detect phrases or sentences that suggest conversations may be happening elsewhere; for instance, 'I've DM'd you' or 'check your LinkedIn' would be flagged as risk alerts.

Review your compliance workflows often, so as not to fall behind innovation

The evolution of social media channels, and business communication channels more generally, is happening at pace. In order to ensure watertight compliance, your policies, technology and solutions must all be agile enough to keep up with the emerging risk landscape. Compliance is not a 'one-and-done', and the creation of a policy or the implementation of a compliance tech stack will not be enough to meet regulatory expectations.

In the case of policies, revise often. Horizon scan for regulatory change or innovation and anticipate possible alterations that will be needed. Again, establish a way to communicate changes with wider teams so that they too are able to stay abreast of changing rules.

For technology, engage with your third party vendor to understand their ability to be agile or flexible. For instance, if a new communication channel emerged tomorrow, how long would it take them to deliver a compliant solution for it? Most vendors should offer ongoing support and training, which should be taken advantage of to ensure that you are putting it to full use. Do not implement an archive or monitoring solution and fail to nurture it: they will

quickly become outdated or risk developing compliance gaps where communication channels have evolved, but your tech stack did not.

CONCLUSION

Ultimately, compliance teams will always be playing catch-up to innovation and emerging risk, and 100 per cent guaranteed compliant communication may always be slightly out of reach. Regulators want to see that compliance teams have a defensible position and have thoughtful strategies in place when approaching innovative compliance. By having a clear understanding of the regulatory landscape and following the above four steps, regulators would be hard pushed to find a compliance team defenceless.

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