

# From Email to Social Media| Decoding Compliance Challenges in Wealth Management



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**Digital communication has made** modern life easier in many ways. One area of headache-inducing complexity is regulatory compliance for wealth management firms. In the wake of the SEC's year-old marketing rule, we see communications compliance as one of the defining issues for the year ahead.

Under the 1940 Investment Advisers Act<sup>1</sup>, advisory firms must monitor and review all "written communications" from advisors to their clients for adherence to regulations and the firm's code of ethics. Then, they must archive those messages for at least three years in an easily accessible and secure format.

Over the past three decades, the definition of written communications has expanded to all electronic channels, from email and text messages to social media, "off-channel" apps, and even embedded video. Since 2021, the SEC has reportedly levied \$1.5 billion in fines for recordkeeping infractions related to off-channel communications.

The conundrum for advisors and wealth managers is they are eager to use these non-traditional channels to strengthen client relationships, attract new prospects, and stay competitive. Indeed, clients are pushing them to digital communication channels, especially the emerging generation of investors who grew up in the digital age. The result is an escalating volume of electronic communications to be monitored and maintained.

## Compliance in the Digital Age

Let's assume an investment advisor sends and receives, on average, 50 emails and text messages daily. In a large firm, the number of individual electronic messages to be flagged and captured can quickly add up to 10,000 or 15,000 per day—not including postings and interactions via Facebook, X, WhatsApp and other social platforms. Moreover, using personal mobile devices for these interactions is a reality firms must account for. No wonder communication oversight has gotten infinitely more challenging than in the typewriter era of '40 Act.

Regulators require wide and comprehensive reviews to uncover fiduciary negligence, misleading statements (including "guaranteed" hypothetical performance), improper representation of past performance, soliciting unapproved products or unsuitable investment ideas, or prospecting using unapproved content. The risks of non-compliance are enormous. While there may be malicious intent behind some of these

communications, many infractions are unintentional or accidental, resulting from ignorance or misinterpretation of the rules. Individual advisors are subject to enforcement actions and chief compliance officers or entire firms can be sanctioned for "failure to supervise" employees' communications.

## Equipping Compliance Officers

Compliance officers must have policies, procedures and protocols in place to help ensure a successful and consistent oversight process. While, Firms rely on on sampling or periodic surveillance to demonstrate compliance, but it is impossible to eyeball every piece of electronic communication leaving the firm.

Fortunately, intelligent technology can enable compliance teams to implement firm-wide digital message surveillance and archiving Lexicon-driven, keyword, and key-phrase intelligence can help analyze virtually all electronic communications and flag any potential infractions.

The key to making this technology work effectively is linking it to portfolio and investor account data directly from a firm's core wealth management platform.

The framers of '40 Act couldn't possibly have anticipated the pervasiveness of digital communications in our culture today. The ability to interact with clients and prospects electronically is now a competitive necessity for wealth advisors—but they have to do so within the letter of the law. With today's intelligent technologies making comprehensive surveillance possible, firms can take full advantage of these new communication channels—and others yet to emerge—while staying on the right side of the regulators. ■

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1. [www.sec.gov/investment/laws-and-rules](https://www.sec.gov/investment/laws-and-rules)

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