

THIS MONTH IN COMPLIANCE:

Annual Risk Assessment Texting Policy

MONTHLY COMPLIANCE TASKS

Please be sure to check your SmartRIA CCO portal to keep up with your monthly Compliance tasks or utilize the CCO Scorecard included in our This Month in Compliance email. Please contact the following for:

- Login and Portal Requests: Sara Sparks: ssparks@thecomplianceresource.com
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ANNUAL RISK ASSESSMENT

A risk assessment has become a standard document request for regulators and goes a long way in describing and developing your compliance program. CRP has developed a template that will assist in your risk assessment and review areas for your firm. In the attached template, we have broken down critical compliance topics required within your firm, and we highly recommend that you perform a risk assessment on these various topics. While the attached format is similar to year's past, we have updated the resources and incorporated new topics we feel necessary for your firm to address. This is also an annual opportunity for the firm to review areas of the Compliance Manual and implement any revised procedures from the previous year, if necessary.

While working through each topic, please list all current controls in place to help mitigate risk to your firm. If you identify an area of high risk to your firm, you will be expected by regulators to address those risks and conflicts with policies and procedures. CRP is here to assist in helping to revise and further tailor your firm's policies and procedures. After you have completed the assessment, and remediated highlighted risk areas, please retain a copy in your RISK ASSESSMENT file. This will show up on your next SEC Exam!

* Please note: the 2021 risk assessment does not take into consideration the new Marketing Rule.

TEXTING POLICY

Texting clients or are your clients texting you? During the COVID period and remote work conditions, IARs and associated persons are increasingly using non-business communication applications for investment advisor business-related communications. When it comes to texting for financial advisers, the SEC is making it clear through heavy fines that it is aware of texting and watching this communication outlet.

Last year, the SEC fined a wealth management firm \$100,000.00 because the firm's employees and affiliated financial professionals allegedly sent and received business-related text messages on personal devices. The texts included pricing information on securities, order sizes, and the timing of trades. In addition, these texts were not captured and archived, as an unrelated SEC investigation subsequently determined, and the firm was unable to produce the texts upon demand.

This recent SEC action highlights the risk that these communications pose for companies subject to strict record retention requirements, such as investment advisers subject to Rule 204-2 and guidance under the Investment Advisers Act of 1940. But it also highlights the risks that these communications pose more broadly for advisory firms and the need to consider adopting technologies and policies that reduce these risks.

As a refresher, the Advisers Act "Books and Records Rule" Rule 204-2 requires advisers to make and retain records relating to their investment advisory business, including "originals of all written communications received and copies of all written communications sent" relating to:

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- any recommendations and advice made or proposed,
- receipt, disbursement, or delivery of funds,
- purchasing or selling a security, or
- the performance of a managed account or securities recommendation,” subject to certain limited exceptions.

Rather than expecting compliance in the abstract, Advisers Act Rule 206(4)-7—called the “Compliance Rule”—requires advisers to be proactive and “adopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and its rules. Citing to this requirement, the alert includes the following recommendations to advisers concerning policies and procedures they may want to implement for the use of electronic communications:

- **PROHIBIT FORMS OF ELECTRONIC COMMUNICATIONS** that easily allow for messages to be sent anonymously, to be automatically destroyed, or prohibits third-party viewing or back-up.
- **REQUIRE A PROCEDURE FOR MOVING AN ELECTRONIC MESSAGE RECEIVED FROM A CLIENT** to another system that is in compliance with its books and records obligations.
- **ADOPT AND IMPLEMENT POLICIES CONCERNING PERSONAL DEVICES** if such devices are used for business purposes.
- If the use of social media, personal email, or personal websites for business purposes is permitted, **IMPLEMENT POLICIES AND PROCEDURES THE MONITORING, REVIEW, AND RETAINING** of such electronic communications.
- **TRAIN PERSONNEL ON THE POLICIES AND PROCEDURES IN PLACE** on use of electronic messaging and the disciplinary consequences for violations.
- **REGULARLY REVIEW SOCIAL MEDIA SITES AND RUN INTERNET SEARCHES** to identify potential violations of the adviser’s policies and procedures.
- **ESTABLISH A CONFIDENTIAL REPORTING PROGRAM** so employees can report their concerns “about a colleague’s electronic messaging,” including use of social media or impermissible posts.
- **REQUIRE THE DOWNLOADING OF SECURITY SOFTWARE** on company-issued or personally owned devices prior to allow them to be used for business purposes. Such software can (i) require cybersecurity updates, (ii) monitor for prohibited apps, and (iii) “wipe” a lost or stolen device of information.
- Reinforce that **VIOLATIONS OF A FIRM’S PROCEDURES MAY RESULT IN DISCIPLINE OR DISMISSAL**.

It’s up to the wealth management firms that support financial advisers to make the message clear. Text data on personal devices is required to be archived alongside other electronic communications content, including email, social media, websites, instant messaging, and collaboration platforms. When firms simplify archiving, it will give compliance, legal, and business leaders the ability to supervise and produce these records in one place.

Below is a list of firms that purport to archive text messages. Do not consider their inclusion on this list to be an endorsement of any kind from CRP. If we left off your favorite text archiving vendor, please let us know and we’ll update the list.

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| ▪ AT&T Business Messaging | ▪ Intradyn Text Message Archiver |
| ▪ Avaya | ▪ MyRepChat |
| ▪ Barracuda | ▪ Smarsh |
| ▪ Bell Network | ▪ Sonar text messaging |
| ▪ CellTrust | ▪ Telemessage |
| ▪ Global Relay | ▪ Vircom |
| ▪ Heritage Werks | |

However, if your firm prohibits text messaging for business-related purposes, as CCO, you fear staff may turn to text with clients and engage in "heavy training" to steer them away. Then document what you've done so that if an IAR does engage over messaging, they've been given fair warning and have violated the terms. The documentation can serve as evidence you can show to a regulator, if necessary.