

Electronic Communications Compliance Checklist for Broker-Dealers



OVERVIEW

Broker-dealers must maintain records of business-related electronic communications. But the requirements for electronic communications recordkeeping, storage and supervision can be daunting. However, with proper oversight, broker-dealers can help their business avoid the risks of litigation, fines or other enforcement penalties from FINRA and the SEC.

This checklist outlines what every broker-dealer needs to consider to reduce their risk of recordkeeping violations and fines.



Establish written supervisory procedures

FINRA Rule 3110 requires a firm's supervisory system to establish, maintain and enforce maintenance of written supervisory procedures (WSPs). Firms are also required to periodically review and update their WSPs, and review all business-related incoming, outgoing and internal communications.

When it comes to electronic communications, an effective WSP should establish:

- Standards for devices and applications that may be used
- Prohibition policies for devices and applications that may not be used
- Plans to monitor prohibited channels to catch off-channel communications
- Manual review processes
- Standards for digital ads or sales literature
- Guidance on sending confidential customer records or information

Know your records

Not too long ago, emails were the only electronic records broker-dealers had to capture and archive. Not anymore. Because of remote and hybrid office cultures as well as customer communication preferences, business conversations now travel seamlessly across workstations, mobile devices, apps and more.

When creating a system for electronic communications compliance, ensure the system can capture all communications that are used for business and their associated metadata:

- | | | |
|--|---|--|
| <input type="checkbox"/> Emails | <input type="checkbox"/> Voice calls | <input type="checkbox"/> Encrypted messaging app communications (WhatsApp, WeChat) |
| <input type="checkbox"/> SMS/MMs text messages | <input type="checkbox"/> Social media posts | <input type="checkbox"/> Collaboration app communications (Microsoft Teams, Zoom, Slack) |
| <input type="checkbox"/> Instant messages | <input type="checkbox"/> Social media direct messages | |
| <input type="checkbox"/> File sharing | <input type="checkbox"/> Social media comments | |
| <input type="checkbox"/> Video calls | <input type="checkbox"/> Chatbot messages | |



Metadata is data that is added to messages but is not part of the content of the message itself.

This includes:

- Date and time sent or received
- Sender and receiver identification
- Message or conversation threading
- Attachments (including images) in messages

If a prohibition policy is in place, it's important to have a plan to monitor channels to catch off-channel communications, and to have record of the monitoring of those unapproved channels.



Storage system requirements

With the recent update to SEC Rule 17a-4, broker-dealers now have improved guidance and clarity on how to preserve and maintain accurate records.

Moreover, [FINRA Rule 4511](#) states that broker-dealers must follow SEC Rule 17a-4. While there are multiple approaches to ensure compliance, the recordkeeping system must:

- Allow for independent access to records
- Have redundancy or back up records
- Be able to accurately produce or reproduce records of any particular time period
- Be able to download and transfer copies of records on both human readable format and in an electronic format that's compatible with commonly used systems
- Have an audit system in place
- Reasonably safeguard records from loss, alteration or destruction

SEC 17a-4 now allows broker-dealer firms to use an audit trail to satisfy recordkeeping requirements as an alternative to traditional WORM storage.

Firms that preserve required records electronically using a third party must file a Third-Party Access Undertaking with their Designated Examining Authority (DEA).

Supervision requirements

Simply capturing and archiving records isn't enough. FINRA Rules 3110 and 3120 require broker-dealers to supervise their business and show proof of oversight.

This requires a system that can arrange and index records in a way that permits:

- Fast and accurate searches
- Easy and reliable retrieval of records
- Search and retrieval of records of specific time periods

As communication data volumes increase in size and variety, it's important for broker-dealers to have recordkeeping solutions that can support their compliance teams.

This means having a system that can identify and flag the following for additional review:

- Phrases such as "text me," "send to my personal email," "direct message me on LinkedIn," etc. (lexicons can be created to identify such phrases)
- Potential regulation best interest (Reg BI) violations
- Communications sent to/from an employee's personal (non-work) email or indications of other off-channel communications
- Conflicts of interest (gifts and entertainment, political contributions)
- Communications from individuals considered "high risk"
- Client complaints
- Guarantees of performance
- Outside business activities (OBA)
- Client information/personal information sent unencrypted/not secured



Mobile supervision

Businesses are becoming increasingly reliant on mobile devices and apps. As long as the communication is business-related, all messages that are sent or received on mobile devices must be archived and supervised.

Firms need to identify what channels employees are allowed to use and then make sure they're capturing and preserving that content. Equally important, firms need to have a plan in place to ensure prohibited channels aren't actually being used.

If a firm allows the use of mobile devices to send and receive business communications, they must be prepared to capture these communications. This applies to firm-provided devices or an employee's personal device if the firm has a bring-your-own-device (BYOD) policy:

- Text messages
- Emails
- Social media posts
- Social media direct messages
- Messaging on collaborative platforms like Zoom, Skype and Microsoft Teams
- Messages on encrypted apps like WhatsApp and WeChat



Need help checking items off this list?

Regulators have made it clear that there will be no debate when it comes to recordkeeping and supervision — even as communications technologies continue to evolve and grow increasingly complex.

Smarsh simplifies compliance by automating communications capture and supervision workflows. Our software and services are purpose-built to meet compliance obligations (FINRA, SEC, NIST, GDPR and more), so broker-dealer firms have the tools they need for success.

Smarsh empowers firms' compliance teams to cost-effectively stay on top of regulatory requirements.

Visit www.smarsh.com to learn more.

This checklist is not intended to be exhaustive and does not fully account for differences among regulatory bodies of the securities industry in non-U.S. markets. Compliance professionals should visit FINRA.org for a complete analysis of applicable rules and regulatory guidance.

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Smarsh serves a global client base spanning the top banks in North America, Europe and Asia, along with leading brokerage firms, insurers, and registered investment advisers and U.S. state and local government agencies. To discover more about the future of communications capture, archiving and oversight, visit www.smarsh.com

Checklist - 03/23

