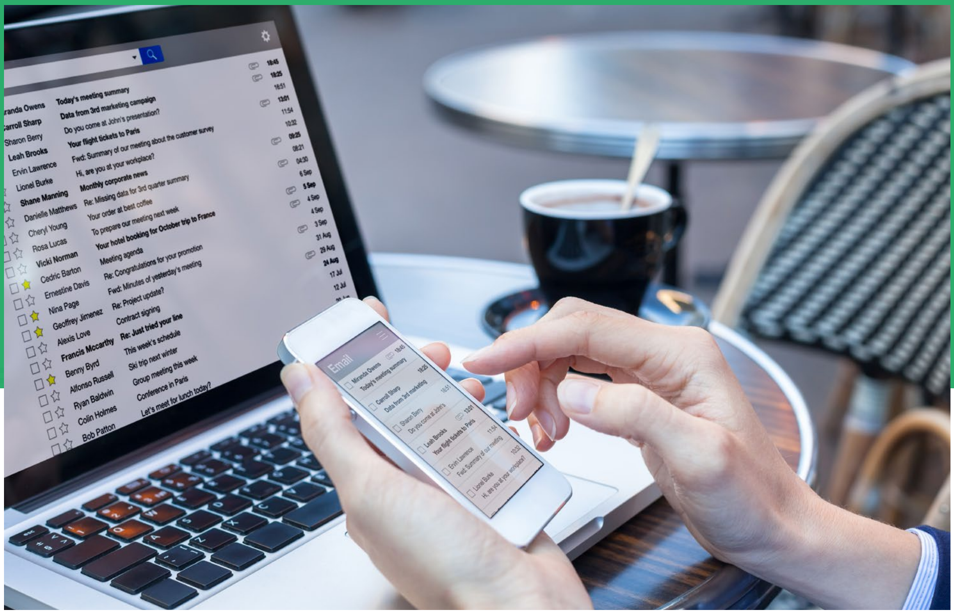

COMPLIANCE CONSIDERATIONS FOR EMAIL MARKETING TOOLS

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CONFIDENTIAL

SUBJECT

This brief sets out the compliance considerations that financial services firms need to consider when using email marketing tools, specifically in relation to the capture, retention, and supervision of electronic communications.

It describes the features and capabilities of the email marketing tools, explains how they are used in practice and outlines the applicable regulations in the US, UK and Canada for capturing and supervising the communications. Finally, we analyze a few use cases for email marketing tools and how regulatory compliance mandates apply to those scenarios.

HOW EMAIL MARKETING TOOLS ARE USED

Email marketing tools help businesses efficiently create, send, manage and track email campaigns, which are a coordinated series of emails designed to achieve specific goals like a marketing or sales campaign. The tools streamline and automate the process of delivering relevant emails to the intended audience at the right time, whether for lead generation, product promotion, sharing useful resources, or building customer relationships.

Email marketing tools are available within marketing automation platforms and integrated into broader CRM and business solutions. Examples include Salesforce Marketing Cloud, HubSpot Marketing Hub, Gmail, LinkedIn, Mailchimp, Adobe Marketo Engage, Twilio SendGrid, Netcore Customer Engagement, Brevo Marketing Platform, and Zoho.

Financial services organizations use these tools to deliver personalized email content to specific client segments or prospects, based on identifiers such as age, financial interests or purchasing history. This targeted approach is designed to increase engagement by ensuring recipients receive relevant and timely messages. The automation features also help streamline essential email communications for processes like onboarding new clients, sending portfolio updates, and notifying customers of important deadlines or regulatory changes.

Email tracking and analytics, such as open rates and click-through rates, provide insights into customer engagement, allowing firms to assess campaign performance and refine the messaging and content of future email communications.

To illustrate, these are real-world examples of how email marketing tools are used in financial services organizations. We will revisit these use cases in Section 5 and provide guidance about how to apply relevant regulatory requirements to interactions on these platforms.

EXAMPLE A

System maintenance information - non-regulated

A bank notifies customers about upcoming system maintenance using standardized email templates in Gmail. Using these templates, the firm sends hundreds of emails advising clients when online and mobile banking services will be unavailable, including key details about alternative support options, followed up by further emails to confirm when services have resumed.

EXAMPLE B:

Holidays greetings and investment nudge to existing customers - non-regulated and regulated

An investment adviser firm uses HubSpot's automation tools to send 'Happy Holidays' emails to all its customers. A follow on email is sent to 20 customer profiles with young children. They are personalized with customers' names and include a festive greeting along with a suggestion to contribute to family investments as an alternative holiday gift, with the campaign's aim to increase customer engagement while promoting year-end financial investment.

EXAMPLE C:

Marketing to new prospects - regulated

A broker dealer launched an email campaign in Salesforce targeting prospects who had opted in to receive communications following their entry to a competition. The campaign promotes a new investment product, tailored to the specific customer segment based on interest and eligibility. Using Salesforce, the emails were created using AI with music themed imagery and concert ticket incentives for those who apply for the new product using the call to action link.

THE KEY DIGITAL COMMUNICATIONS CAPABILITIES OF EMAIL MARKETING TOOLS

Understanding the scope of electronic communications within email marketing tools is critical for firms to be able to capture and supervise them in accordance with regulatory obligations. The capabilities vary by both the tool and the features enabled by organizations.

The features of email marketing tools are designed to help businesses communicate effectively with customers and prospects. Core capabilities include pre-built templates and drag-and-drop editors that make it easy to create professional, branded emails. They allow images and GIFs to be incorporated into emails to create more engaging campaigns, as well as thumbnails for videos which can be viewed in full on external sites. Documents can be added, such as PDF files in Salesforce, or shared via a link such as in HubSpot by uploading the file to a cloud storage service like Google Drive, Dropbox, or Box. Additional contextual information can also be included, such as enhancing subject lines with emojis. Links can be integrated into templates to encourage recipients to follow call-to-action (CTA) options like "Download free guide."

Personalization capabilities enable tailored messaging, such as using recipients' first names or recommending products based on their purchase history. Tools like HubSpot and Salesforce use CRM data—such as first name, company, lifecycle stage, or purchasing behavior—enabling firms to tailor email content for each recipient. Artificial intelligence (AI) capabilities further enhance personalization and efficiency by helping draft subject lines, preview text, and email body content. These AI assistants also support tone adjustments and content rewriting to match campaign objectives, with content either fully created by AI or co-edited with employees.

Automation features within email marketing platforms enable firms to schedule emails in advance and create automated workflows that trigger follow-up actions based on recipient behavior—such as opening an email or clicking a link. Contact list management and segmentation support the delivery of targeted messages allowing businesses to segment audiences based on criteria such as demographics, location, or engagement history. This segmentation ensures that each audience group receives content specific to their interest or needs, increasing the likelihood of engagement and improving overall campaign performance.

Analytics and reporting features help businesses measure and optimize their campaigns. Email marketing tools offer detailed insights into opens, click-throughs, bounces, conversions, and content effectiveness. Testing capabilities allow firms to experiment with different subject lines or content formats to determine what resonates best with recipients. Platforms such as HubSpot and Salesforce also offer integrations with customer relationship management (CRM) systems, ensuring that marketing efforts align with broader customer engagement activities.

KEY REGULATIONS THAT APPLY TO THE CAPTURE & SUPERVISION OF COMMUNICATIONS FROM EMAIL MARKETING TOOLS

The requirements for capturing and supervising electronic communications, including emails sent through marketing tools, are set out by global regulators. These include rules from the Security & Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), the Commodity Futures Trading Commission (CFTC) and the National Futures Association (NFA) in the US; the Financial Conduct Authority (FCA) in the UK and the Canadian Investment Regulatory Organization (CIRO). As a baseline, any written communications related to a firm's business must be captured, retained, and supervised.

US rules set out detailed expectations for retaining written electronic communications for broker-dealers and investment advisers. The SEC's Exchange Act Rule 17a-4, and FINRA Rule 4511 require broker-dealer member firms to, "among other things, create and preserve, in an easily accessible place, originals of all communications received and sent relating to their "business as such." FINRA's 2025 Annual Regulatory Oversight Report reemphasized this point specifically calling out "emails, instant messages, text messages, chat messages, interactive blogs" as business communications that would trigger recordkeeping requirements. FINRA's Regulatory Notice 17-18 explains that the content of communications determines what must be retained and its Advertising Regulation FAQs D.8 clarifies that a firm's regulatory obligations in relation to written communications like email apply "regardless of whether they are generated by a human or AI technology".

The SEC's Advisers Act Rule 204-2(a)(7), similarly requires that investment advisers "preserve in an easily accessible place originals of all communications received and copies of all written communications..." relating to specific categories including recommendations or advice proposed or given. The SEC's January 4, 2012 Risk Alert: Investment Adviser Use of Social Media clarifies that "the content of the communication is determinative" of whether the rules apply and that the recordkeeping obligation "does not differentiate between various media, including paper and electronic communications, such as e-mails, instant messages and other Internet communications".

The importance of ensuring written communications sent from email marketing tools meet record-keeping and supervisory obligations is reinforced in an enforcement action by FINRA for a firm's "[f]ailure to preserve and review over 1.25 million business-related electronic communications" where the "vast majority were mass marketing emails sent to large distribution lists".

The content of communications must also align with guidelines for marketing and advertising. FINRA Rule 2210, Communications with the Public, sets out content standards to ensure broker-dealers' communications are fair, balanced and not misleading. It defines all communications as either correspondence, retail communications, or institutional communications and specifies the retail communications required to be filed with FINRA before first use or publication. Similarly, SEC Rule 206(4)-1 (the "Marketing Rule"), governs communications by investment advisers to ensure they are not false or misleading. For FCA regulated firms, the obligations are set out in COBS Rule 4.2.

Other applicable record keeping rules include CFTC Regulations 23.202 and 1.35., and NFA Compliance Rule 2-10(a). The applicable FCA rules include SYSC 10A.1.6, in conjunction with the requirements for MiFID II business.

The supervisory obligations for written electronic communications include FINRA Rule 3110(b)(4) which requires firms to have procedures for the "review of incoming and outgoing written (including electronic) correspondence and internal communications". Other requirements include CFTC Regulation 23.602(a) and 166.3 together with NFA Rule Supervision rule 2-9 . Similarly CIRO rule 3900 and FCA's SYSC 6.1 set out broad supervisory requirements to detect risks of non-compliance with regulatory obligations.

INTERPRETATIONS OF THE RULES & APPLICATION TO THE USE CASES

To illustrate how the recordkeeping and supervision rules apply in practice we can consider the use cases outlined in section 2. These include both regulated and non-regulated business activity, and the compliance approaches and best practices therefore differ accordingly.

EXAMPLE A

System maintenance information - non-regulated

In the first scenario where a bank sends hundreds of emails using Gmail marketing templates to inform customers about the availability of services due to system maintenance, there is no regulatory requirement to retain the communications or supervise them. This is because the communications do not relate to the firm's "business as such," and FINRA's Regulatory Notice 17-18 clarifies that "...for record retention purposes, the content of the communication determines what must be retained."

EXAMPLE B:

Holidays greetings and investment nudge to existing customers - non-regulated and regulated

In the second scenario the targeted follow up emails sent through HubSpot to a select group of 20 customers with the suggestion to contribute to investments as a holiday gift relate to the firm's "business as such," and the firm would be required to capture, retain and supervise them. The relevant rules for e-comms capture apply including the SEC's Investment Advisers Act rule 204(a)(7) which requires retention of the emails for at least five years.

EXAMPLE C:

Marketing to new prospects - regulated

In scenario C the broker dealer's promotional emails sent through Salesforce to a hundred prospects encouraging them to apply for a new investment product relate to the firm's "business as such" and regulatory obligations to capture, retain and supervise them apply.

In accordance with SEC's Exchange Act Rule 17a-4, and FINRA Rule 4511, the firm must retain records of the email communications for at least three years. Rules 3110(b) requires the firm to have procedures for the "review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business".

With regards to the AI generated email content the firm's obligations still apply "regardless of whether they are generated by a human or AI technology" as stated in FINRA Advertising Regulation FAQs D.8.

In accordance with FINRA Rule 2210: Communications with the Public, the promotional emails meet the definition of 'Retail communication" which includes any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. The firm must submit these "retail communications" to FINRA's Advertising Regulation Department; for review and approval before using them with the public.

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