COMPLIANCE CONSIDERATIONS
VIDEO MARKETING TOOLS

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SUBJECT

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

It describes the features and capabilities of video 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 video marketing tools and how regulatory compliance mandates apply to those scenarios.

HOW VIDEO MARKETING TOOLS ARE USED

Video marketing tools help organizations create, distribute, and analyze video content to support sales and marketing activities. They enable firms to create personalized video messages for sales outreach, lead generation, training, and customer engagement.

Platforms like Vidyard, Vimeo, BombBomb, Wistia, VBrick and Kaltura enable businesses to record, upload, and publish videos across websites, email, and social media. This enables firms to use them in social media marketing and email campaigns, live streaming, product demonstrations and customer support. Internally, they support corporate communications, employee training, and onboarding.

Features such as AI-powered content generation, drag-and-drop editing, customizable branding, interactive calls-to-action and SEO optimization help firms enhance the reach and engagement of videos. Analytics provide details such as watch time and click-through rates enabling firms to refine the content of videos. Many video marketing platforms integrate with CRM systems, allowing users to send video messages directly from tools like Salesforce to improve campaign efficiency.

To illustrate, below are three real-world examples of how video 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:

Onboarding new staff - non-regulated

A bank uses BombBomb to enhance its employee onboarding process by delivering personalized video messages. Executives share welcome videos outlining the firm’s goals, while the support team provides product demonstrations tailored to new hires. Additionally, IT training videos guide employees through system setup and operational procedures, ensuring a smooth transition into their roles.

EXAMPLE B:

Sales adviser outreach - regulated

An investment adviser firm uses Vidyard to update clients on new investment opportunities through personalized video messages. Advisors send tailored emails featuring videos that highlight investment products, explain market trends, and outline potential benefits and recommendations based on each client's financial goals. The videos provide an engaging channel for outreach, allowing advisors to build stronger client relationships and improve sales.

EXAMPLE C:

Marketing campaigns - regulated

A broker-dealer uses Vimeo for its investment marketing campaigns by integrating video across multiple channels, including its website and social media channels, and leverages well-known personalities and influencers to expand reach across their followers. The videos cover market insights and investment opportunities and include a call-to-action directing viewers to complete a form for more information.

THE KEY DIGITAL COMMUNICATIONS CAPABILITIES OF VIDEO MARKETING TOOLS

Understanding the scope of electronic communications within video 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 platform and the features enabled by organizations.

Video marketing tools enable users to create or record video content through webcam, screen recording or file upload. Built-in editing and production capabilities include drag-and-drop video editors, templates, animations, stock footage and the ability to include branding elements like logos. Some tools use AI to generate video content from text or images. The platforms support personalization by adding personal elements such as the viewer's name or company.

Interactive features like embedded calls-to-action, forms, polls, and clickable links within the video help increase engagement and guide viewers to specific next steps. The tools provide features to improve visibility on platforms like YouTube and social media such as automatic subtitles, keyword tagging, and SEO-friendly titles and descriptions.

Video content can be published or embedded across a range of channels including email, landing pages, websites, and social media platforms. Many tools support scheduled publishing, video playlists, and custom-branded sharing pages. For example in Vidyard users can share the video by copying a link, with or without an accompanying video thumbnail, or use an embed code to add videos to emails and websites or set up a branded video sharing page. In Vimeo, videos can be shared across social channels like Instagram, LinkedIn, and TikTok or streamed live or on-demand to Apple iOS, Android, Apple TV, and Xbox apps for example As well as scheduling videos for publishing, videos can be livestreamed in tools like Kaltura. Users can also upload existing videos and store them in a content library, as well as download copies from their library.

Performance tracking capabilities provide analytics to monitor viewer behavior—such as watch time, engagement, drop-off points, and conversions to help optimize the performance of video content. Integration with other sales and marketing tools allows video messages to be sent directly from CRMs, and to track video interactions in order to trigger follow-up actions.

KEY REGULATIONS THAT APPLY TO THE CAPTURE AND SUPERVISION OF COMMUNICATIONS FROM VIDEO MARKETING TOOLS

The requirements for capturing and supervising electronic communications are set out by global regulators. These include rules from the Security & Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA), in the US; the Financial Conduct Authority (FCA) in the UK and the Canadian Investment Regulatory Organization (CIRO).

Given the nature and purpose of communications created using video marketing tools, the regulatory rules and guidelines for marketing and advertising should be taken into account. This includes guidance issued by regulators including the SEC, FINRA and the FCA regarding the use of social media which maps social media obligations to existing marketing, recordkeeping, and oversight requirements.

For broker-dealers, relevant rules include FINRA Rule 2210, Communications with the Public, which sets out content standards to ensure broker-dealers' communications are fair, balanced and not misleading. The rule also defines communications as either correspondence, retail communications, or institutional communications and sets the standards for approval, review and recordkeeping, including the requirement to file retail communications with FINRA before first use or publication.

Records of the video marketing communications need to be retained as set out in FINRA's January 25, 2010 Regulatory Notice 10-06 on Blogs and Social Networking Web Sites, which states that "Every firm that intends to communicate, or permit its associated persons to communicate, through social media sites must first ensure that it can retain records of those communications as required by Rules 17a-3 and 17a-4". The SEC's Exchange Act Rule 17a-4, and FINRA Rule 4511, require broker-dealer member firms to, "..create and preserve, in an easily accessible place, originals of all communications received and sent relating to their "business as such." FINRA's Regulatory Notice 17-18 explains that the content of communications determines what must be retained.

Rule 3110 (Supervision) requires firms to establish and maintain a system to supervise the activities of each associated person. Where the videos are used for live communications, FINRA's August 2011 Regulatory Notice 11-39 Guidance on Social Networking Websites and Business Communications, explains that "FINRA considers unscripted participation in an interactive electronic forum to come within the definition of "public appearance". While prior principal approval is not required, firms must supervise these interactive electronic communications and may adopt supervisory procedures utilizing post-use review of unscripted participation to ensure they do not violate the content requirements of FINRA or SEC rules.

FINRA's targeted sweep in 2021 to review firms' acquisition of customers through social media channels, led to an enforcement action where influencers communications "posted on the firm's behalf communications about the firm that were not fair and balanced or made claims that were exaggerated, unwarranted, promissory, or misleading". The firm did not review or approve the content in its influencers' posts prior to use or retain those communications.

For investment advisers, SEC Rule 206(4)-1 (the "Marketing Rule"), governs the content of communications to ensure they are not false or misleading. The Advisers Act sets out the recordkeeping obligations where Rule 204-2 requires registered investment advisers to retain copies of any recommendation made, including through social media. The SEC's January 4, 2012 Risk Alert: Investment Adviser Use of Social Media clarifies that, similar to the requirements for broker-dealers, "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 that relate to the advisers’ recommendations or advice”. It further clarifies that social media “may use many technologies, including, but not limited to, blogs, microblogs, wikis, photos and video sharing, podcasts, social networking, and virtual worlds”.

For FCA regulated firms, firms should retain records of relevant communications, as outlined in SYSC 9 and COBS 4.11. Firms must have an adequate system in place to sign off digital media communications, in line with the requirements of SYSC, SYSC 3 and SYSC 4 and COBS 4.10. The FCA’s FG24/1: Finalised guidance on financial promotions on social media highlights that “Any form of communication (including through social media) is capable of being a financial promotion if it includes an invitation or inducement to engage in investment activity” and the need to ensure risk information has sufficient prominence, across “Livestreams (including gaming streams such as Twitch)”,“Short-form video content (eg TikTok)” and “Long-form video content (eg YouTube)”.

In July 2023, the Ontario Securities Commission (OSC) published guidance in Staff Notice 33-755 relating to bloggers/influencers “who share information (often via posts, videos, and podcasts on popular social media platforms)” reminding firms to “monitor and oversee their arrangements with marketing partners and verify that claims and statements made about the firm’s products and services are fair, substantiated and not misleading” in accordance with NI 31-103, s. 11.1 Compliance system and training.

INTERPRETATIONS OF THE RULES AND APPLICATION TO THE USE CASES

To illustrate how the 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:

Onboarding new staff - non-regulated

In the first scenario where a bank is using BombBomb to enhance its employee onboarding process by delivering personalized video messages and training, there is no regulatory requirement to approve, retain the video communications or supervise them. The videos are not financial promotions and 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:

Sales adviser outreach - regulated

In the second example where investment advisors use Vidyard to send updates to clients on new investment opportunities through personalized video messages, the firm would be required to capture, retain and supervise them.

As the personalized video messages highlight relevant investment products, explain market trends, and outline potential benefits and recommendations based on each client’s financial goals the firm will need to retain copies of the videos in accordance with the Investment Advisers Act Rule 204-2.

As discussed above, 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 content of the personalized video messages will need to align with SEC Rule 206(4)-1 (the "Marketing Rule"), to ensure that investment advisors provide accurate, fair, and balanced information.

EXAMPLE C:

Marketing campaigns - regulated

In scenario C the broker-dealer uses Vimeo for its investment marketing campaigns, by sharing video across its website, and social media channels and leveraging well-known personalities and influencers.

Given that the videos include market insights and investment opportunities, with a call-to-action directing viewers to engage and find out more, the content will need to comply with FINRA Rule 2210, Communications with the Public to ensure communications are fair, balanced and not misleading. The promotional videos 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. A qualified registered principal must approve these "retail communications" and submit to FINRA's Advertising Regulation Department; for review and approval before using them with the public.

Records of the video marketing communications need to be retained as set out in FINRA's January 25, 2010 Regulatory Notice 10-06. The SEC's Exchange Act Rule 17a-4, and FINRA Rule 4511, require broker-dealer member firms to, "..create and preserve, in an easily accessible place, originals of all communications received and sent relating to their "business as such."