

E-mail Review

Regular review of e-mails, while not specifically required for SEC registered investment advisers (and not generally required for state registered advisers), can be a useful part of an adviser's supervision practices to help identify potential violations of the securities laws or the firm's policies. In addition, e-mail review can help protect investment advisers from a claim that the adviser failed to supervise its employees under Section 203(e)(6) of the Investment Advisers Act or similar state securities regulations. E-mail review programs should be designed based on the firm's unique business practices and risks, and not all review programs will look the same. We have created this list of tips to help guide advisers in implementing an e-mail review process.

Create a Framework

- Identify the volume of e-mails produced by the firm. Most firms will not be able to review all e-mails and will need to determine a reasonable sampling of e-mails to review.
- Understand the firm's e-mail storage practices and what tools are available. Some e-mail services have built-in search features that can facilitate the review.
- Determine a reasonable sample size and desired frequency of review.
- Assign responsibility. If the CCO is not conducting the initial review, the reviewer should be properly trained. Any questionable e-mails should be escalated to the CCO.
- Reviews can be done of all Supervised Persons or a sampling. If not performing reviews of all Supervised Persons, rotate the e-mail addresses chosen in order to cover all Supervised Persons throughout the year (e.g., focus on 3-4 Supervised Persons per month). Potentially focus a larger portion of the sample on higher-risk employees (e.g., sales and marketing staff, individuals with disciplinary history).
- Evaluate appropriate methods of review, such as conducting a review of a random selection of e-mails, using a keyword search, or a combination of the two methods.
- If using keyword search, take care in selecting keywords. If keywords selected are too broad, these searches are likely to generate false positives; if too narrow, they may miss relevant e-mails. Supervised Persons seeking to hide problematic activities may be aware of and avoid the use of trigger words, so the use of keywords alone may be insufficient to detect violations.

Things to Look for (Not an Exhaustive List)

- In the review, look not only for outright violations of law or firm policy, but other suspicious or uncharacteristic activity or patterns of behavior.
- Review e-mails to clients/investors to confirm no guarantees of performance were made or promissory language was used to entice investment.
- Review e-mails regarding investment products to confirm that the risks of investment were not downplayed or misrepresented.
- Review any advertising materials (materials to obtain and/or retain a client/investor) included as attachments or in the e-mail content to confirm they are accurate, including performance numbers of investment products or composites, and contain complete and accurate disclosures.
- Review for false or misleading statements in communications with clients/investors.

- Review the handling of client/investor Non-Public Personal Information (NPPI), such as sending NPPI unprotected (sent without password protection or encryption).
- Review any communications that appear to be contrary to the firm's Policies and Procedures regarding electronic communications.
- In e-mails from clients/investors, watch for complaints that were not properly reported to the firm or were handled contrary to firm policy.
- Look for unreported gifts and entertainment with clients/investors or vendors.

Escalation & Documentation

- If there are any e-mails that appear to raise a red flag, those e-mails should be tagged for further review or investigation.
- The resolution process of the problem should be documented. It should also be documented if the "problem" ended up not being an issue.
- Involve the Supervised Person's supervisor or firm management in addressing issues, particularly if the violator is a repeat offender. If necessary, consult the firm's legal counsel regarding serious violations.
- Corrective actions for violations could include e-mail reminders of firm policy to individual employees or firm-wide, additional one-on-one training, formal memos to an employee, or more severe sanctions taken by the Supervised Person's supervisor, depending on the severity of the violation and the firm's disciplinary policy.
- In addition to documenting specific problematic e-mails as discussed above, it is a recommended practice to keep a log or other record of e-mail reviews conducted identifying e-mails reviewed, date of the review, person responsible for the review, and any findings. Some e-mail services have built-in tools to mark e-mails as reviewed and run reports on reviews conducted.

For additional information on this topic or other compliance matters, please contact us.

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