

# Who's risking your business? (Part III)

Part three of our series “Who’s risking your business?” focuses on the critical considerations in cross-channel marketing. It will discuss the controls that a firm with multiple business lines must establish in order to ensure that sales, marketing and compliance are aware of which division is launching a particular product or service.

**Brokerage communications and sales with the public.** Firms engaged in securities brokerage or dealing activities must comply with specific FINRA guidelines concerning the content and review of communications with the public. General standards for public communication are set forth in Rule 2210, which states that all communications must be “based upon principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts . . .” relating to the offered securities.

Advertisements and sales literature about investment products must describe the characteristics of the investment. For variable life insurance and variable annuities, this means the institution must not imply that the products offered are short-term, liquid investments. On the other hand, when providing information about a mutual fund’s ranking, the firm must ensure that the communication prominently discloses the name and number of investment companies in the category, the ranking entity’s name, the length of the period involved and the criteria on which the ranking is based.

**Investment advisory marketing.** Fiduciary standards for investment advisors include the duty of loyalty requiring full and fair disclosure of all material facts to its clients. Firms that provide investment advice for compensation are subject to of the Investment Advisers Act of 1940, including section 206, which prohibits investment advisors from using any advertisement that contains an untrue statement of material fact or is otherwise misleading.

Unlike brokerage communications, investment advisors can use testimonial communications pertaining to the advisor’s services, including any endorsement by a client.

Finally, perhaps the biggest challenge for

investment advisors is knowing what performance advertising standards to apply for their institutional, wrap-fee and retail advisory clientele. Each of these clients requires different types of disclosures.

**Compliance tips to avoid cross-channel marketing complications.** Evaluating the various regulatory advertising requirements for each type of marketing communication will greatly assist the financial institution’s compliance efforts in cross-channel marketing practices. To begin this process, identify:

- How your firm markets to the public — testimonials, rankings, newsletters, conference pitch-books, etc.?
- What products does it offer and are they offered in both the bank, broker/ dealer and/or advisory channels?
- Who provides performance reporting and what type of methodology is used to report performance?
- Where is your firm’s information posted? Web sites are often overlooked. If it’s not password protected, it could be considered an advertisement.

Given the complicated nature of cross-channel marketing, firms should examine their internal controls to understand the complexities of the advertising rules, and incorporate necessary practices into their financial institution’s policies and procedures.

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