Special Section

Solutions for Growing the Business

This quarter, we had the opportunity to sit down with Mitch Avnet, Founder and Managing Director of Compliance Risk Concepts, to discuss the evolution of communication, particularly as it relates to texting and social media, and the growth opportunity it presents for Financial Services firms and their Financial Consultants. We discussed the business potential and how best to manage the risks that come with leveraging evolving forms of electronic communication.

DDW: Regular, ongoing communication between Advisors and their clients is key to building and maintaining strong relationships. As styles and methods of communications evolve, it's natural for both clients and advisors to want to use all of the channels available to them, including ever-evolving electronic and social media options. These options have the potential to better engage clients and make business faster and easier, all of which lead to deeper relationships and potential revenue. Along with the benefits, however, come challenges for firms as they attempt to evolve programs to capture and monitor all lines of communication.

DDW: Of all forms of communication used today, "texting" has become the go-to source for many of us. What trends are you seeing in Advisor/Client communications related to the use of text communications?

Mitch Avnet: *The number of firms allowing texting as a method of communication are on the rise. This is due to the fact that (a) clients expect this level of communication and accessibility in the digital age, and (b) archiving and monitoring/management solutions that are out there are continuously evolving. It's the way people communicate today, and it makes sense that both clients and advisors want to exchange in the same way they communicate in the rest of their relationships. Today's clients generally want to leverage technologies available to them to make the investment and asset management process faster and more engaging.*

DDW: Could you give some examples of how some Advisors are using texting today?

MA: *Texting is being utilized for things as simple as appointment reminders to reaching out to clients and prospects with marketing material. Advisers engaging in the latter need to be cognizant of the FCC's Telephone Consumer Protection Act (TCPA) regulation.*

DDW: Before we go into the considerations and controls firms need to think about with these types of communication, could you talk about some of the benefits to Firms allowing Advisors to text?

MA: *Texting absolutely helps keep your clients and their satisfaction at your fingertips. It also allows for rapid communication with a wide-range of prospects, if used for marketing purposes. The ease of texting is appealing to today's clients, many of whom are constantly connected to their phones. Texting with clients and prospects provides a more personal feel than blast emails, etc. This is a benefit that cannot be overlooked.*

Advisers giving out their personal or business cells to clients and may find themselves in a position to address investment related questions in such an environment.

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Mitch Avnet,
Compliance Risk Concepts

DDW: Agreed. Could you talk about how some firms are over seeing text communications today?

MA: *In many firms today, current standard is an "honor system" of advisor certification that they are following the firm's policies. Firms who have electronic communication policies that extend to the use of text messaging will typically require employees to certify (on a quarterly or annual basis) that they have not utilized text message functions in a way that violates firm policies. While this is a necessary step and a decent approach at managing the matter of electronic communication, the best approach to compliance and risk mitigation is a proactive one. To that end, firms should not necessarily rely on simply trusting that employees are complying with e-communication policies, however well-developed they may*

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be. Instead, firms should consider a more proactive approach that continually verifies such certifications.

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> *"Applying a uniform standard of review to all electronic communication is a logical approach. This gives the appearance of placing the same level of importance on all forms of client communication and lends a sense of legitimacy to texting oversight procedures that is on -par with email review." — MA*

DDW: With the volume of texts vs email or other types of communications, this clearly poses a challenge for firms in capture and retention. How does this differ from oversight of email and other Advisor communications?

MA: *Employees have been conditioned to treat email as a business communication; firms need to implement training and procedures that establish texting-for-business in this same vein. Use of acronyms and abbreviations (even "emojis") often used when texting can create difficulty when reviewing communications for a particular lexicon of key phrases and red-flags.*

A proactive approach is the best one; firms should create policies and operate under the assumption that in this day and age, at least one of their employees or representatives has given a client their cell number. This opens the door to texting, and firms need to have procedures prepared to address this activity, whether it is routing a response through firm email, or implementing texting oversight solutions with a third-party vendor.

A network of solutions needs to be implemented in order to ensure that all aspects are addressed (cyber, privacy, conduct, compliance with e-communication policies, investor protection, etc.)

DDW: Why should firms consider building an oversight program sooner rather than later?

MA: *Regulators are continually developing an interest in electronic communication. As FINRA and the SEC have both noted for the past few years in their exam focus and initiatives the specific issues of investor protection and cybersecurity, it is clear that advisors participating in electronic communication will need to have solutions in mind on both fronts, or risk facing enforcement actions, bad press, and potential loss.*

As noted above, firms should assume that employees or representatives are already in a position to receive a business-related text from a client (or prospect); the firm must implement procedures to appropriately and uniformly deal with such communications.

DDW: As they do, what are the key questions firms should be considering?

MA: *There are a number of considerations, but three of the key questions should be:*

- ***Are text messages captured through current oversight systems?*** *Firms should confirm if and how they are able to monitor employee/representative devices utilizing currently available resources. If this is not possible, additional solutions need to be researched.*

- ***Are conversations protected by cybersecurity measures?*** *Firms must ensure that, as client communications and business records, text messages are secure, protected from misappropriation, and able to be retained per applicable regulation.*

- ***Are you able to confirm that information being shared is appropriate?*** *Firms must implement training for employees who will be utilizing this form of communication, underscoring the fact that texts are business communications and are subsequently subject to all such standards, policies, and procedures as letters, emails, and face-to-face interactions with clients and prospects. Firms should consider implementing a quarterly certification that reminds employees of such facts and requires them to certify that they have complied with such procedures, in addition to the formal review of business-related text messaging.*

DDW: What are some best practices for Firms to get the process started?

MA: *For firms looking to implement a texting program, they should consider:*

- ***Extend electronic communication policy to text messages along with quarterly certification***
- ***Verify the information is monitored through continued surveillance***
- ***Will ultimately require technology and tools***

A proactive, well-designed approach to regulatory compliance is always the best one. Firms should consider current risk and needs, industry best practice, as well as anticipate future or impending regulatory guidance or recent enforcement actions relative to cybersecurity, investor protection, and electronic communication. Firms should also consider new technologies and third-party resources that are developing to support these areas. An electronic communications policy that extends to restrictions on text messaging paired with a quarterly certification and acknowledgment process are the first steps toward ensuring appropriate behavior surrounding advisors use of text messaging. The next logical (and essential) step is to verify such information through continued surveillance and monitoring.

About Compliance Risk Concepts

CRC is a business-focused team of senior compliance consultants and executives who furnish top-tier compliance advisory services to small and large firms on an as-needed, project or part-time basis. CRC brings a unique, tailored approach to help their clients succeed in today's challenging regulatory and economic environment, enabling and empowering them to manage the "cost of compliance" without sacrificing the necessary infrastructure and control environment.

Visit compliance-risk.com or contact the DDW, Inc. team for more information.

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