

Bird & Bird

Financial Services & Social Media Compliance

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More financial services are embracing social media platforms to communicate with and market to customers and prospective customers. The regulatory framework is likewise evolving.

The Increase in Social Media Use by Financial Services

Social media, as opposed to traditional forms of media, coalesces around the factors of connectivity and reach of the internet in order to deliver and receive information. Financial services, like many other businesses, have been flocking to the use of social media to reach consumers.

Even as developments in technology empower businesses to make advances and innovate in the delivery of information, among other advantages, there has also been a growth of regulations which relate to the use of social media for financial services.

The Asia-Pacific is no exception to this global trend. A look at some countries across the Asia-Pacific reveals the trend of nascent and developing frameworks of such regulations pertaining to social media use and the financial services.

The United States (the "US")

Among the most intensively-regulated with respect to social media usage in the financial services sector, the US has multiple regulations specifically dealing with social media.

In 2013, the Federal Financial Institutions Examination Council, a US inter-government agency, issued a note titled "Social Media: Consumer Compliance Risk Management Guidance". Other regulations (i.e. "Notices" and a "Rule") have been issued by the Financial Industry Regulatory Authority ("**FINRA**") from 2010 to 2015, and approved by the Securities and Exchange Commission.

Some of the more stringent regulations set out in the abovementioned documents include the following:

- Maintenance of risk management programme with a governance structure for social media;
- Implementation of an employee training programme for work-related social media use;
- Supervision of associated persons who use social media sites for business purposes;
- Supervision over certain content by a registered principal of the firm before its publication; and
- Keeping record of communications made via social media sites.

More recently, on 5 January 2016, FINRA issued its 2016 Regulatory and Examination Priorities Letter, where it noted some disjoint between communications involving private placements and their risks. On this basis, FINRA stated it "*will continue to evaluate firms' compliance with respect to their communications, including general solicitation advertisements and materials posted on the internet*", a warning that financial services will continue to be closely watched in their social media dealings.

Hong Kong

In Hong Kong, there have been a recent streak of regulations which relate to online advertisements and social media use.

In 2013, the Hong Kong Securities and Futures Commission ("**HKSFC**") published the Guidance Note on Internet Regulation and the Collective Investment Schemes Internet Guidance Note, which clarified the HKSFC's approach in regulating financial institutions' conduct of internet activities. These Notes mandate applications to be made to the HKSFC for approval of certain advertisements with respect to certain types of investment schemes.

More recently, the Hong Kong Monetary Authority issued its Supervisory Policy Manual in 2015, which dealt with the risk management of internet banking accessed via social media platforms. Among other things, this Manual mandated adequate security controls to protect data transferred via such platforms.

Singapore

Singapore does not have a set of regulations that is as developed or stringent as the US or even Hong Kong, with respect to social media use by financial services. However, it does have applicable regulations found in various codes and guidelines.

The Advertising Standards Authority of Singapore, for example, in its 3rd edition of its "Singapore Code of Advertising Practice" in 2008, has a stated purpose of the "*regulation of commercial advertising*". Its scope includes advertisements via "*internet services*" and "[d]igital communications in every format, design and context including the world-wide web (Internet)", and has a specific section on "*Financial Services and Products*". There is also the Code of Advertising Practice for Banks published by the Association of Banks in Singapore (updated in 2010), which would apply specifically to banks.

In 2013, the Monetary Authority of Singapore introduced its Technology Risk Management Guidelines to regulate the use of technology specifically for financial services, and such technology expressly included the use of the internet and social media platforms.

Navigating the Regulatory Environment

With the growth of a consumer base that is increasingly plugged into social media platforms, more financial services will inevitably shift towards social media usage, or increase their existing presence online via social media. Financial services making this shift must, however, be cognisant of the regulatory environment(s) surrounding their use of social media. Awareness among employees, especially those involved in the direct handling of the firm's social media platforms, should be ensured. Policies and training programmes should be periodically reviewed and be up-to-date with the latest regulatory requirements and as a matter of good practice, should conform to non-binding pronouncements by relevant agencies.

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