

EBOOK

Navigating regulatory compliance: three questions to help you get on **the right path**

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Do you know the regulatory rules and how to apply them?

As a marketer of financial services, you need to get your message to prospects and clients quickly. You also want to comply with the rules and guidelines that protect investors and help maintain efficient markets.

But understanding every advertising regulation and navigating content and disclosure requirements from the Financial Industry Regulatory Authority (FINRA) and U.S. Securities and Exchange Commission (SEC) can be, well ... taxing.

Given the many types of investor products and services, the multiple regulatory agencies and regulations, and the variety of methods marketers use to reach their customers (social, video, newsletters, etc.), how can you ensure your content is complying with the correct regulatory rules?

The truth is, ever-evolving products, services, technologies, and communications channels complicate which regulations should be applied, and it's not always crystal-clear what actions you should take or disclosures you should make to be fully compliant.

It's important to get it right.



Your ultimate purpose is to safeguard investors and markets

Any misstep in the content, review, approval, filing, or recordkeeping of your marketing communications may expose your firm to fines and potentially damage your brand's reputation.

That's why you should always **focus on creating content that is fair, balanced, and not misleading**. It's the baseline requirement of all content related to investment services, no matter what product or service you're promoting.



First things first: Three essential questions

To ensure you're following appropriate regulations, you should understand which rules apply to your marketing content.

To get started, answer these three questions:

- 1 Who is the communication from?
- 2 Who are you sending the communication to?
- 3 What is the product or service you're discussing?

Why are these questions the most important?

We explain each one on the following pages.

Who is the communication from?

It's important to first identify the person or firm that will be promoting your content. Will it be a broker-dealer, a registered representative of a broker-dealer, an investment adviser, or more than one of these?

FINRA regulations typically apply to broker-dealer firms and their registered representatives. The SEC Investment Adviser Marketing Rule 206-4 commonly applies to advertising and marketing communications from registered investment advisers. But both FINRA and SEC rules could apply, depending on the circumstances.

Investment adviser



Broker-dealer



Key rules that govern financial services marketing content

- ✓ [FINRA 2210](#)
- ✓ [SEC Investment Adviser Marketing Rule 206-4](#)
- ✓ [SEC Rule 156](#)
- ✓ [General fraud provisions that apply to financial services marketing content](#)

In past years, understanding which regulations applied to financial marketing content was easier.

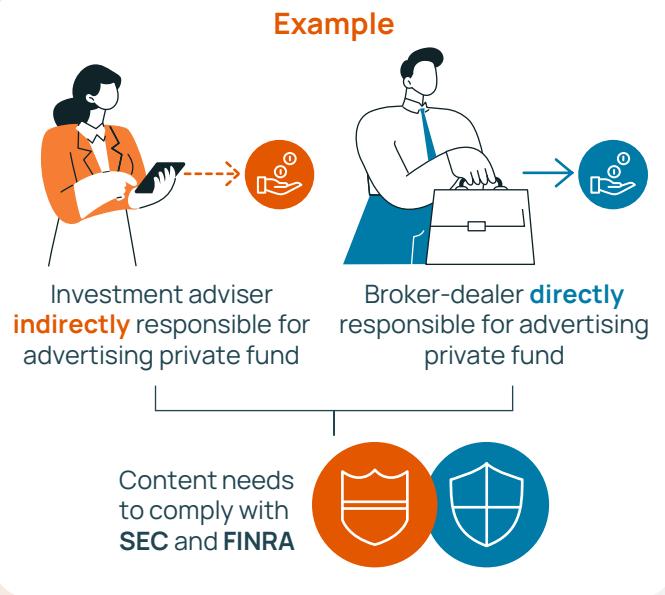
More than a decade ago, there were fewer types of investment products. **Marketers could more easily identify if rules governing broker-dealers or register investment advisers applied.**

But today, the diversity of financial offerings is more complex, as are the channels through which these products are distributed. Innovative technologies that give marketers more ways to connect with customers have prompted new regulations (social media channels, for example). Many advisers are also transitioning from wirehouses (i.e., full-service broker-dealers) to independent advisers. Or they're diversifying into wealth management, asset management, and other areas, which often blurs the lines and the regulations that apply—even within one firm.

Now, determining the appropriate regulations and required disclosures is more complicated

For example, a broker-dealer may be required to distribute a private fund (unregistered security), which is a service or product from an investment adviser. However, if an investment adviser offers a private fund, they may be indirectly responsible for the broker-dealer's advertising of that fund, meaning advertising must comply with intersecting regulations from FINRA and the SEC.

Simply applying broker-dealer advertising rules may not address considerations in the SEC Investment Adviser Marketing Rule. Additionally, the investment adviser may have certain record-keeping requirements under the rules if the advertisement is considered to be the adviser's indirect advertising.



QUESTION 2:

Who are you sending the communication to?

Both the SEC and FINRA recognize differences in audience expertise and that the application of rules may vary by audience. That's why it's critical you understand the type of investor you are marketing to. In other words, who is expected to read your content—the general public, institutional investors, or a limited number of targeted individuals?

FINRA guidelines

FINRA rule 2210, for example, generally applies to **two groups of investors—retail and institutional**.



FINRA defines **retail investors** as “any person other than an institutional investor, regardless of whether the person has an account with a FINRA member.”

While some retail investors may be financially savvy, **many have no formal training in finance** and rely on financial advisers, online resources, or personal research to make investment decisions.



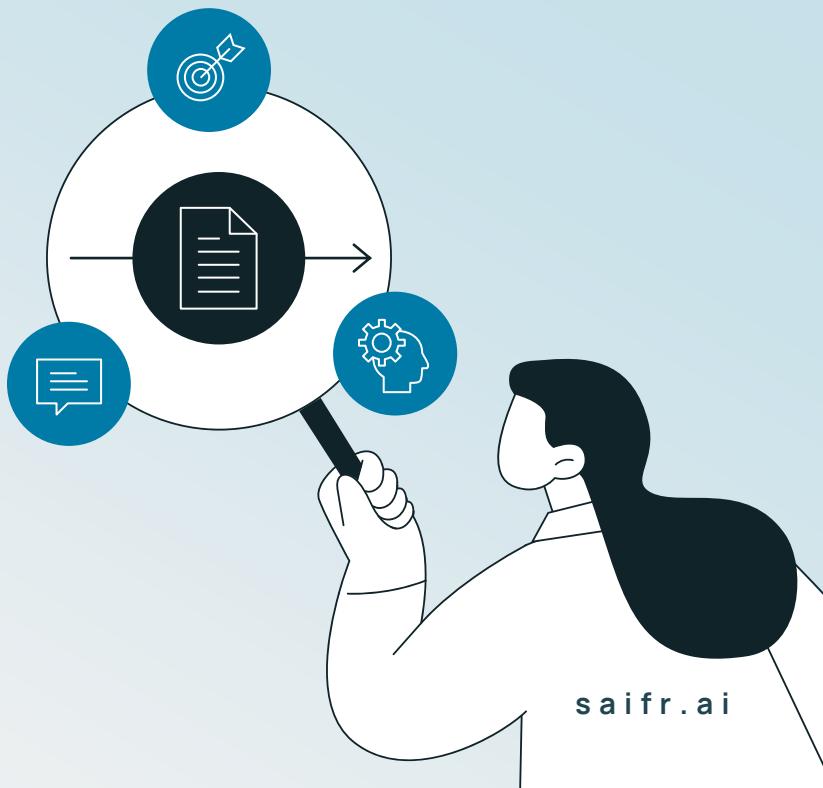
Institutional investors are typically organizations, such as registered investment advisers, pension funds, hedge funds, and insurance companies, with professional investment teams. These teams may consist of financial analysts, portfolio managers, and other experts who possess extensive financial knowledge.

They are well-versed in **complex financial instruments, risk management, and investment strategies**. The definition also includes individuals with total assets over \$50M.

SEC guidelines

On the contrary, the SEC's IA Marketing Rule does not specifically define a retail versus an institutional audience. That said, the rule's adopting release highlights the importance of considering the circumstances in which a communication is delivered. For instance, it's essential to understand that retail and institutional investors have different goals, behaviors, and decision-making processes.

The “how” and “to whom” determine whether a marketing communication includes enough disclosures and explanations for the given audience. So, marketers must understand this context as they prepare their communications for compliance review.



What is the product or service you're discussing?



The type of product you're promoting or recommending also determines which regulations are applicable. So, marketers need to understand the products for which they're creating communications.

FINRA requires firms to file retail communications with FINRA's Department **within 10 business days of first use or publication** for the following types of products. These are retail communications that:

- ✓ Promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts)
- ✓ Relate to public direct participation programs (as defined in Rule 2310)
- ✓ Concern collateralized mortgage obligations registered under the Securities Act
- ✓ Involve any security that's registered under the Securities Act and is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance, or a foreign currency

FINRA also requires firms to file retail communications with FINRA's Department at least **10 business days prior to first use or publication** for retail communications that concern:

- ✓ Registered investment companies (e.g., mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter, or an affiliate
- ✓ Retail communications involving security futures, with some exceptions



Communications filed with **FINRA's Advertising Regulation Department** (the "Department") must be withheld from publication or circulation until any changes are specified by the Department.

As mentioned earlier, the evolution of investment products can make it complicated for marketers to understand which regulations apply. For instance, a broker-dealer's communication about a mutual fund (investment company) must follow relevant sections of the Securities Act (Rule 482) and FINRA Rule 34b-1 under the Investment Company Act, where the former has detailed requirements related to mutual fund performance advertising. However, if the product is a private fund or a strategy managed by an adviser, then the adviser must follow the relevant performance requirements of the SEC's IA advertising rule.



What can you do as a marketer?

Identify if the products for which you're creating communications are classified as mutual funds, private funds, separately managed accounts, or other investment vehicles. Clearly categorizing the product type can help compliance partners—or tools evaluating the content—to spot potential regulatory requirements or concerns and identify necessary disclosures.

HOW CAN YOU NAVIGATE THE RULES?

Knowing the rules is only the first step

Understanding which rules to apply is one step toward compliance. However, you also need to know how to apply each regulator's rules within the context.

Consistently reference regulatory resources, published notices, guidance documents, and explanations on recent enforcement decisions to help you understand the context of applicable regulations and ensure your team fully complies with industry regulations. Links to helpful resources are included below. Ultimately, every firm's content needs are unique, so always consult with your legal and compliance experts to ensure your content is accurate, complete, and compliant.

By tailoring your content to the specific needs, preferences, and regulations for each type of investment, investor group, and audience, **you can increase the effectiveness and compliance of your marketing content and build trust with your prospects and clients.**

Resources

FINRA 2210

[Rules](#)
[Notices](#)
[Guidance](#)
[FAQs](#)
[Key Topics](#)
[Interpretive Questions](#)

SEC

[Investment Adviser Marketing Rule 206-4](#)
[Marketing FAQ](#)
[Risk Alert](#)
[Enforcement Action Aug 2023](#)
[Enforcement Action Sept 2023](#)



How Saifr can help you

With so many regulatory requirements applied to financial communications, it can be challenging for marketers to create compliant content. Saifr is designed to help with select regulations* and streamlining your review process.

Saifr uses AI, machine learning, and workflow and collaboration tools to help reduce the friction in content creation, approval, and filing.

Saifr's distinctive AI models are based on robust data

Saifr is noteworthy for its strong AI made possible by unique access to data—millions of documents from thousands of marketing and compliance experts in various lines of business. These documents, and those from other independent sources, were validated by former regulatory attorneys and feed the natural language processing models.

Plus, Saifr includes a feedback loop that allows its AI to learn from users and become more effective over time, so it's well equipped to handle new scenarios, unlike rule-based methods.



By using a massive amount of labeled and unlabeled data, Saifr's AI can flag **90%** of what a human would.

*Saifr is designed to help address FINRA 2210 and select rules of SEC Investment Adviser Marketing Rule 206-4. Depending on a firm's desire and ability to integrate a disclosure library with Saifr's capabilities, it may be able to assist with disclosures required by different regulatory requirements, such as Rule 482.

Saifr can support you by:

Understanding content as it's being created

Explaining why content is flagged – promissory, misleading, exaggerated, not fair or balanced

Suggesting more compliant wording

Highlighting potential marketing and compliance risks in text, images, video, and audio

Providing disclosures that may be required

Assisting with FINRA filing

Providing SEC 17a-4 storage



Get started in one click

Saifr applications use the power of AI to help you create more compliant content up to **10x faster**. Choose the best application for your needs:



SaifrReview®

- ✓ Content development and collaboration tools
- ✓ Text, images, audio, and video review for regulatory compliance
- ✓ Risk flagging and scoring
- ✓ Disclosure detection and recommendations
- ✓ Storage and reporting



SaifrScan®

- ✓ Integrates Saifr AI into your existing content development software
- ✓ Highlights problematic sentences
- ✓ Explains why text may be risky
- ✓ Suggests alternative language
- ✓ Recommends disclosures

Regulatory compliance is essential, and marketers have an important responsibility

- ⓘ Learn more about how to reduce your time, effort, and cost of compliance at: www.saifr.ai.
- ⓘ Let us show you how we can help: [request a demo](#).

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