

Navigating AI Compliance

Privacy, Recordkeeping, Disclosures, Human Oversight, and More

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Agenda

- Potential AI use cases
- The current regulatory framework
 - Evolving SEC stance
 - Current SEC stance
 - Regulation S-P
 - Recordkeeping Rule
 - Potential disclosure implications
 - Human oversight / supervision
- Steps to compliantly adopt AI

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Potential AI use cases

- General research
 - Akin to a Google search (launch off point)
 - *Fact check assertions / sources*
- Developing marketing content
 - Ideation, first draft prep, refine drafts
 - *Fact check assertions / sources*
- Client email drafting / refining
 - *Be mindful of client non-public info conveyed via email*
 - *Fact check assertions / sources*

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Potential AI use cases

- Client meeting recording / transcription
 - *Be mindful of client consent, potential recordkeeping obligations, and capturing sensitive info*
- Client-specific research
 - *Anonymize client identifying information*
 - *Fact check assertions / sources*
- Portfolio / financial plan design
 - *Understand if/how client identifying information is captured and used*
 - *Fact check assertions / sources*
 - *Triggers recordkeeping obligations*
 - *Likely significant disclosure obligations*
 - *Non-negotiable human oversight*

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The current regulatory framework

- Evolving SEC stance
 - Proposed (but withdrawn) Rule: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers
 - Would have imposed fairly prescriptive AI-related compliance obligations
 - The SEC's "AI Washing" Enforcement Actions
 - Making false/misleading statements about the use of AI
 - SEC 2025 Exam Priorities
 - "If advisers integrate AI into advisory operations, including portfolio management, trading, marketing, and compliance, an examination may look in-depth at compliance policies and procedures as well as disclosures to investors related to these areas."

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The current regulatory framework

- Evolving SEC stance
 - SEC 2025 AI Roundtable
 - "The AI roundtable will discuss the risks, benefits, and governance of AI in the financial industry.
 - Recordings all available on the [SEC's YouTube page](#)
 - SEC Investor Advisory Committee's Disclosure Subcommittee Regarding Digital Engagement Practices
 - "The SEC should target its proposals on predictive data analytics and artificial intelligence that interact directly or that facilitate direct interaction with investors..."
 - Prior SEC Chair Gary Gensler's AI skepticism
 - Systematic Risk in Artificial Intelligence
 - "Isaac Newton to AI" Remarks before the National Press Club

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The current regulatory framework

- Current SEC stance
 - The SEC's own AI Task Force
 - “The AI Task Force will empower staff across the SEC with AI-enabled tools and systems to responsibly augment the staff’s capacity, accelerate innovation, and enhance efficiency and accuracy”
 - President’s Executive Order policy goal to “sustain and enhance America’s global AI dominance”

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The current regulatory framework

- Regulation S-P
 - Governs the treatment of nonpublic personal info (“NPI”) about consumers of financial institutions (including SEC-registered investment advisers)
 - Genesis of an adviser’s privacy notice
 - Describes the conditions under which an adviser may disclose NPI to nonaffiliated third-parties
 - Affords certain consumer NPI “opt-out” rights
 - NPI: personally identifiable financial information (“PIFI”); excludes publicly available info
 - PIFI includes any info:
 - A consumer provides to an adviser to obtain a financial product or service
 - About a consumer resulting from a financial product or service transaction
 - Otherwise obtained about a consumer w/r/t providing a financial product or service

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The current regulatory framework

- Regulation S-P
 - Disclosure exception: “as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes...”
 - Reg S-P does not supersede, alter, or affect any State statute, regulation, order, or interpretation if such State affords any consumer greater protection provided under Reg S-P
 - Be mindful of State privacy / AI regulatory developments

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The current regulatory framework

- Recordkeeping Rule (204-2)
 - “... shall make and keep true, accurate and current the following books and records...”
 - (a)(7): all written communications received and copies of all written communications sent by an adviser relating to:
 - (i) Advice or recommendations given or proposed to be given;
 - (ii) Any receipt, disbursement or delivery of funds or securities;
 - (iii) Securities purchases or sales; transaction confirmations/affirmations
 - (iv) Performance / rate of return info
 - (11)(A): disseminated advertisements
 - General substantiation expectation

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The current regulatory framework

- Potential disclosure implications
 - [Form ADV Part 2 Instructions](#)
 - "... you must make full disclosure to your clients of all material facts relating to the advisory relationship... you also must seek to avoid conflicts of interest with your clients, and, at a minimum, make full disclosure of all material conflicts of interest between you and your clients that could affect the advisory relationship."
 - "... you therefore may have to disclose to clients information not specifically required by Part 2 of Form ADV or in more detail than the brochure items might otherwise require."
 - [Commission Interpretation Regarding Standard of Conduct for Investment Advisers](#)
 - [Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations](#)

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The current regulatory framework

- Human oversight / supervision
 - AI tools are still prone to hallucinations
 - Unchecked hallucinations → make false, deceptive, or misleading statements → violation of the Advisers' Act anti-fraud section (§206) and/or Marketing Rule general prohibitions (Rule 206(4)-1(a))
 - Compliance policies and procedures, training, and supervision

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Steps to compliantly adopt AI

- Perform initial and periodic due diligence
 - Data used for model training purposes?
 - How is data maintained, and for how long?
 - What security / privacy settings can be toggled on or off?
 - What to the terms of use and privacy policy state?
- Adopt compliance policies & procedures
 - CCO pre-approval
 - Limit to firm-sanctioned AI tools
 - Recordkeeping, supervision, information security, and other use boundaries
- Implement periodic internal training

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Steps to compliantly adopt AI

- Update privacy / information sharing policies & procedures and privacy notice
 - May only be needed if NPI shared with an AI tool
- Obtain client consent to recorded, transcribed, and/or summarized meetings
 - Be mindful of state-specific requirements re: call recording
- Consider whether ADV disclosure is warranted
 - Unlikely unless AI used for portfolio design, management, or financial plan development
- Assess whether any existing tech tools now integrate AI such that it creates second-degree implications for the firm

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And remember....

- The current SEC Recordkeeping Rule references "microfilm" and "microfiche" as examples of how advisers can electronically store their files. Microfilm was invented in the 1800s
- Regulation will always lag behind innovation... do the best you can to fit the square peg into the round hole

Me, in an earlier life and with hair,
reviewing an ADV



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