



# Social Media Compliance

## August 4, 2010

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**Many Advisors are jumping into Social Media to communicate with clients and generate new business. However, many Advisors are still confused on how to proceed.**

**We'll dig into important compliance matters and how to utilize social media in a compliant manner.**

# About AdvisorAssist

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AdvisorAssist provides comprehensive services for Registered Investment Advisors and those seeking independence.

Our services include:

- ▶ Turn-Key RIA Setup
- ▶ Advisor Transition Services
- ▶ Advisor Registration
- ▶ Compliance Program Design
- ▶ Ongoing Compliance Support
- ▶ Mock Exams and Assessments



For more information, visit our website at <http://AdvisorAssist.com> or call Chris Winn at 617-532-0925.

# Today's Topics

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- ▶ Getting started with social media
- ▶ Investment Advisor Representatives/RIAs vs. Registered Representatives/B-Ds
- ▶ What is an Advertisement under IA 206(4)-1?
- ▶ Books and Records Rules
- ▶ Social Media Technology
- ▶ Common Mistakes
- ▶ Questions

# Getting started with social media

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**Both Registered Representatives of a Broker-Dealer and Investment Advisor Representatives of an RIA Firm may use social media in their business. While the rule may differ, the following items must be addressed regardless of structure.**

- ▶ Social Media = Advertising
- ▶ Advertising must be reviewed and monitored
- ▶ Advertising must be archived
- ▶ Firms must have policies and procedures.

# Use of Social Media – RR vs. IAR

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## Registered Representatives of Broker-Dealers

- ▶ FINRA released guidance this year on Blogs and Social Media sites that allows Registered Reps to participate in social media without pre-approval of an individual post.
- ▶ Pre-Approval by the B-D
- ▶ Formal archiving process and technology solution
- ▶ Principal review of the use of Social Media
- ▶ Adherence to 17a-4 and FINRA Books and Records requirements.

# Use of Social Media – IAR vs. RR

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## Investment Advisor Representatives of RIA Firms

- ▶ Rule 206(4)-1 – “advertising rule”
- ▶ No Testimonials
- ▶ Any communication to more than 1 person is an advertisement!
- ▶ No formal system requirements for archival by the Advisers Act or State Regulations, but the regulators expect to see this in place regardless.
- ▶ No pre-approval for any posts, unless firm policy.

# Use of Social Media – IAR vs. RR – cont.

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## Registered Representatives of Broker-Dealer Firm

- ▶ January 2010 – Regulatory Notice 10-06 was issued with guidance on Blogs and Social Networking sites
  - Considered advertising, but no pre-approval under Rule 2210
  - Supervisory responsibility to monitor
  - Rule 2310 – Suitability. Recommendations must be suitable for the recipient
  - Firms must have policies and procedures governing use of social media sites
  - Third party posts are not a firm communication unless the RR is involved with the 3<sup>rd</sup> “*preparation*” of the 3<sup>rd</sup> party post or has “*adopted*” its content for its purposes.

# What is an Advertisement under Rule 206(4)-1?

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## ▶ LinkedIn

- Your personal profile
- Your business profile
- Your status updates
- Group affiliations and discussions
- Content submissions (i.e., news articles)
- Messages to > than 1 person
- Advertisements



## ▶ Twitter

- Your personal profile
- Your business profile
- Tweets and ReTweets
- Lists
- Private Tweets



## ▶ Facebook

- Your personal profile
- Your business profile
- Your status updates
- Your wall
- Content submissions (i.e., news articles)
- Messages to > than 1 person
- Advertisements



# Books and Records Requirements

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**REMINDER -- Social Media is ADVERTISING! You must follow archive and retention rules for advertisements.**

- ▶ Rule 204-2 of the Investment Advisers Act of 1940 requires that RIA keep true and accurate records of advertisements for at least 5 years from the end of the years when the item was last used in your business. Rule 17a-4 and FINRA Regs have similar requirements.
- ▶ Do you have records of all posts?
- ▶ Do you know how and when something is deleted from your social media sites?
- ▶ Do you have the context in which you commented? That may become very important in an exam.
- ▶ Technology can be a big enabler here!

# Social Media Technology

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**Could be money well spent.**

- ▶ Rule 206(4)-2 – RIA Books and Records
  - No technology defined
  - Make and keep true
  - Required to produce at time of regulatory audit
  - Supervisory personnel must monitor
  
- ▶ Rules 17a-3 and 17a-4 – Exchange member Firms
  - WORM Storage (Write Once Read Many) - a non-rewritable and non-erasable mechanism
  - Required to produce at time of branch of FINRA exam
  - Supervisory personnel must monitor

# Common Mistakes

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**Learn from others. Don't make these common mistakes.**

- ▶ Forgetting Compliance Pre-Approval
- ▶ Allowing Testimonials.
- ▶ Not Maintaining Adequate Books and Records
- ▶ Not monitoring your Supervised Persons
- ▶ Not segmenting your network. Keep personal away from business
- ▶ Recommending a particular investment (remember suitability requirements?)
- ▶ Privacy. Don't communicate private info over open networks – Yes advisors are really making this mistake!

# Questions

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If you have questions that do not get answered during this session, please feel free to contact me at:

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