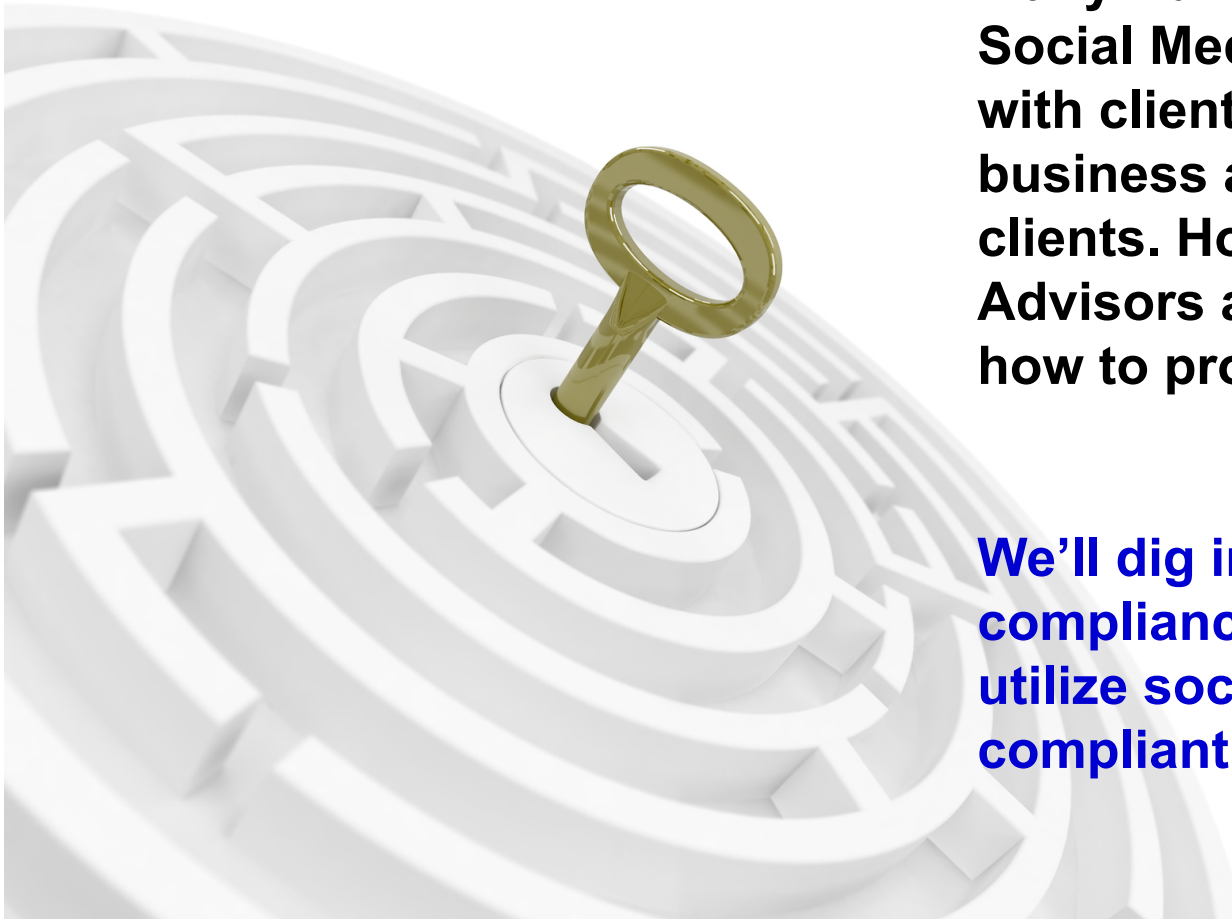




Rules of the Road
Using Social Media in a Financial Practice
September 21, 2011

Social Media Compliance



Many Advisors are jumping into Social Media to communicate with clients, generate new business and even service clients. 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.

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Today's Topics

- ▶ Getting started with social media
- ▶ How are advisors using 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

What is considered social media?



Getting started with social media – cont.

Both Registered Representatives of a Broker-Dealer and Investment Advisor Representatives of an RIA Firm may use social media in their business. As the rules differ, the following items must be addressed regardless of your business model.

- ▶ Social Media = Advertising
- ▶ Advertising must be reviewed and monitored
- ▶ Advertising must be archived
- ▶ Firms must have policies and procedures
- ▶ Segment business and personal worlds!

Getting started with social media – cont.

Start with a strategy not an accommodation!

1. Develop a firm strategy
 1. Why are we using social media?
 2. Who can use social media in the firm?
 3. When can someone represent the firm?
 4. What social forums add value to your brand and image?
2. Develop a deployment strategy
3. Develop a monitoring and archival strategy

Then, develop policies and procedures! And train the team.

Getting started with social media – cont.

Segment your networks!

What is your biggest risk or concern?

Hint: It should not be the SEC, the States or FINRA...

Getting started with social media – cont.



...It is your buddy from
high school!

If you don't want to review
an embarrassing moment with
clients, ***segment your networks!***

Segment your networks!

How are advisors using social media?

- ▶ **Promoting their website**
- ▶ **Demonstrating knowledge and expertise**
- ▶ **Learning and knowledge sharing**
- ▶ **Communicating with clients**
- ▶ **And some have even started to service clients through social networks.**

Use of Social Media – RR vs. IAR

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

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.

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 3rd “*preparation*” of the 3rd party post or has “*adopted*” its content for its purposes.

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

Recap of Advisers Act Rules

- ▶ Supervision (Rule 206(4)-7)
 - Chief Compliance Officer must implement a compliance program and procedures to prevent, detect and correct violations of securities laws. And must test effectiveness annually.
- ▶ Advertising (Rule 206(4)-1)
 - Advertising must be truthful and accurate -- Rule 206(4)-1(a)(5)
 - No Testimonials -- Rule 206(4)-1(a)(1)
 - No advertising specific past recommendations -- Rule 206(4)-1(a)(2)
 - Cannot use RIA along with the name or title of person – FIRM ONLY.
- ▶ Books and Records (Rule 204-2)
 - 5 years from end of year last used
 - Does not define “how to retain”, but examiners have expectations

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

Recap of FINRA Rules

- ▶ Approval and Recordkeeping (Rule 2210)
 - Firms must supervise all electronic communications
 - Pre-approval not required by FINRA, but firm may be more restrictive
 - Post review is expected
- ▶ Supervision (Rule 3010)
 - Oversight
 - Monitoring tools
 - Policies and Procedures
- ▶ Books and Records (Rule 3110)
 - Must be maintained with firm record for 3 years from last use
 - Must be compliant with 17a-3 and 17a-4 of the Securities Exchange Act of 1934
- ▶ Third-Party Posts (Rule 2210 and Notice 10-06)
 - 3rd-Party posts become covered if rep/firm is involved in preparation or “endorses” the content. (Likes, Retweet, Forwards)

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

▶ 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



Can you “Like” a posting or become a Fan to a page?

Sometimes, but be careful.

- A **Like** a page (becoming a fan) often does not impose a compliance risk.
 - ◆ *Like* a restaurant
 - ◆ *Like* a picture of a client or friend
 - ◆ *Like* content on other pages when it is not an endorsement of a financial product or service

- Compliance Risks
 - ◆ A *Like* on your company page can be viewed as a **Testimonial**
 - ◆ A *Like* on your profile update can be viewed the same
 - ◆ No *Likes* on security recommendations
 - ◆ No *Likes* on investment products or services
 - ◆ No *Likes* for other advisors



Twitter “Follow” and “Retweet”



- ▶ Generally, “**Following**” a person, company or product is not a compliance issue as long as it is not construed as a recommendation or endorsement.
 - *Following* an advisor - OK
 - *Following* a mutual fund complex – OK
 - *Following* a specific investment – Could be a compliance issue.

- ▶ “*Retweeting*” is allowable only if it is not a recommendation
 - A *Retweet* can be an endorsement or testimonial
 - A *Retweet* of a general topic of interest does not pose compliance risk (but must still be monitored and archived)

 - *Compliance Risks*
 - ◆ A *Retweet* on an advisor’s profile update can be viewed as a Testimonial
 - ◆ No *Tweets or Retweets* on security recommendations
 - ◆ No *Tweets or Retweets* on investment products or services
 - ◆ No *Tweets or Retweets* for other advisor’s content. Becomes an Endorsement

Books and Records Requirements

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

Could be money well spent.

- ▶ Rule 206(4)-2 – RIA Books and Records
 - No technology required defined – can have a process
 - Make and keep true books and records
 - 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



Social Media Technology - continued

How it works.



Source: Arkovi.com

Common Mistakes

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

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

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