

Compliance Issues Posed By LinkedIn, Blogging & Social Networking Sites



March 4, 2009

Advisor Products

History



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- Original users of social networking and blogging:
 - ▣ Slackers
 - ▣ Youth



Today's Categories



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□ Blogs:  ADVISOR PRODUCTS INC.

□ Social Networking:



facebook

□ Professional:



□ Instant Messaging:



□ Others...



...and the flood arrives



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Who Determines the Rules?



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- Registered Representatives:
 - Firm
 - FINRA Rules
 - State securities rules
- Investment Adviser Representatives:
 - Firm
 - Investment Advisers Act of 1940 and SEC releases
 - State regulations
 - Full regulation if state registered
 - Anti-fraud provisions if SEC registered
- CAUTION: providing/offering services through the web may result in the representative and/or firm having to register in additional states.

Broker-Dealer Advertising



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- ❑ Includes all categories of communications with the public including: correspondence, public appearances, advertisements, sales literature, reprints of sales material.
- ❑ Banner advertisements, blogs, and bulletin boards are advertisements.
- ❑ An email or instant message (IM) sent to more than 25 prospective retail customers is considered sales literature.
- ❑ An email or IM is considered correspondence if sent to one existing or prospective customer, to an unlimited number of existing retail customers and/or less than 25 prospective retail customers within a 30 day period.
- ❑ Registered Representatives email sent from home or firm office falls under FINRA jurisdiction.
- ❑ Chat room discussions are considered public appearances.
- ❑ Password protected websites are considered sales literature.

Broker-Dealer Retention Issues with Web Marketing Tools



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- Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934, require broker-dealers to preserve certain electronic records. If the records are kept electronically the broker-dealer must:
 - preserve the records in non-rewritable, non-erasable format;
 - verify automatically the quality and accuracy of the recording process;
 - serialize the original and duplicates as well as time-date the information; and
 - have the capacity to readily download indexes and records preserved.
- The broker-dealer keeping electronic records must also:
 - have available facilities for immediate, easily readable projection or production of the records;
 - be ready, and immediately provide, a facsimile of the record;
 - store separately from the original, a duplicate copy of the record; and
 - organize and index accurately all information maintained electronically.

Broker-Dealer Retention Issues with Web Marketing Tools



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- Additional FINRA rules to consider:
 - ▣ Rule 2110 - standards of commercial honor and principles of trade;
 - ▣ Rule 2210 - communications with the public;
 - ▣ Rule 2310 - recommendations to customers (suitability);
 - ▣ Rule 3010 - supervision; and
 - ▣ Rule 3110 - books and records.
- In addition, numerous interpretive releases speak about the retention and supervision of e-mail communications.
- FINRA even published a “Guide to the Internet for Registered Representatives” to help registered representatives navigate compliance requirements when using the internet and e-mail.

Broker-Dealer Concerns with Web Marketing Tools



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- Prior use approval and supervision is generally required.
- Must include all material information including risk disclosures.

Solutions for Broker-Dealers and Representatives



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- Important internet compliance issues
 - ▣ Get permission.
 - Registered representative's and supervisors should contact their firm's compliance department for details before acting.
 - Many firms prohibit the participation on blogs, chat rooms and other web-based platforms; most firms have email monitoring programs.
 - Non-compliance could result in firm sanctions and/or disciplinary disclosure.
 - ▣ Plan your public communications.
 - The immediate gratification of web 2.0 solutions is tempting, but don't react.
 - Know the platform that you are using and be aware of what you can and cannot say.
 - Rules and firm policies must be considered.
 - ▣ Remember what hat you are wearing at any given time.
 - Registered representatives have more regulatory freedom than investment advisers representatives.
 - Registered representatives generally have less employment freedom than investment adviser representatives.

Investment Adviser Advertising



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- Definition of an advertisement
 - Any notice, circular, letter or other written communication addressed to more than one person or any notice or other announcement in any publication which offers:
 - Analysis, report or publication concerning securities;
 - Any graph, chart, formula or other device to be used in making any determinations as to when to buy or sell any security or which security to buy; or
 - Any other investment advisory services with regard to securities.
- Rule 206(4)-1 of the Investment Advisers Act of 1940 specifies certain types of advertisements as “fraudulent, deceptive, or manipulative.”

Investment Adviser Advertising



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- Prohibitions
 - ▣ Testimonials
 - ▣ Past specific recommendations
 - ▣ Charts, graphs, formulas
 - ▣ Free services
 - ▣ Misleading
- Performance Advertising
- Other issues

Investment Adviser Retention Issues with Web Marketing Tools



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- ❑ Rule 204-2 of the Investment Advisers Act of 1940.
- ❑ Various state requirements.
- ❑ Lack of guidance on electronic communications.
- ❑ Similar requirements for keeping electronic books and records as broker-dealers.

Investment Adviser Concerns with Web Marketing Tools



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- Testimonials – not defined by the SEC but generally includes any statement of a client’s experience with, or endorsement of, an adviser.
- ▣ LinkedIn recommendations
- Misleading bios
- ▣ Facebook
- ▣ LinkedIn
- Past specific recommendations
- ▣ Tweeting
- ▣ Blogging
- Partial client lists
- ▣ Publication of “friend” list or “connections”
- General employment issues
- ▣ Permission from employer
- Retention

Solutions for Investment Advisers



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- You can blog. You can use every type of networking site. It's just a matter of making it work under the rules and regulations. You are in control.
- Treat blogging and networking tools as if they were advertisements.
 - ▣ Keep things general
 - ▣ Do not give actual investment advice
 - ▣ Do not mention specific recommendations
 - ▣ Get approval when necessary
- Testimonials:
 - ▣ Non-client testimonials?
 - ▣ Testimonials includes statements about an adviser's character or knowledge of investing.
 - ▣ Even if a statement does not violate testimonial rules, the SEC aggressively interprets such statements under the general anti-fraud provisions.

Permitted LinkedIn Testimonials



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Account & Settings

Account

User since May 30, 2007

You have a **Personal** account. [View purchase history](#) | [Compare account types](#)

Get more when you upgrade

- ✔ More Communication Features and Access
- ✔ More Powerful Search

[Upgrade](#)

Introductions: 5 of 5 available
Tip: If your Introductions run out, either wait for a recipient to take action or [upgrade your account](#).

InMails: 0 available [Purchase](#)
InMails let you send business and career opportunities directly to any LinkedIn user. [Learn more.](#)

Settings

| | |
|---|---|
| <h4>Profile Settings</h4> <p>My Profile Update career and education, add associations and awards, and list specialties and interests.</p> <p>My Profile Photo Your profile photo is visible to everyone.</p> <p>Public Profile Your public profile displays full profile information. http://www.linkedin.com/in/hamburger</p> <p>Manage Recommendations You have received 1 recommendation 1 client</p> | <h4>Personal Information</h4> <p>Name & Location Control your name, location, and display name settings.</p> <p>Email Addresses Your primary email address is currently: bhamburger@marketcounsel.com</p> <p>Change Password Change your LinkedIn account password.</p> <p>Close Your Account Disable your account and remove your profile.</p> <h4>Privacy Settings</h4> |
|---|---|

Received Recommendations

Please add these recommendations to your profile:

[View] Recommendation provided by **Richard Oring** (client)

Richard Recommends

Show: [All \(7\)](#) | [Colleagues \(1\)](#) | [Service Providers \(5\)](#) | [Business Partners \(1\)](#) | [Students \(0\)](#)

Mark Spooner

Business Consultant

☞ If you need a person who will work with you on advance insurance matters, Mark Spooner is your person to call. Mark has helped my company design and present complicated insurance cases for our clients. *February 27, 2008*

Top qualities: Personable, Expert, High Integrity
Richard hired Mark in 2002.

Nick Nicholaides

IT Consultant

☞ I have been working with Nick in purchasing my computer equipment since 2007. Nick has always showed me that he kept up on the newest technology and services. Nick has always given me competitive prices. I feel comfortable recommended Nick for any companies computer needs. *February 27, 2008*

Top qualities: Personable, Expert, Good Value
Richard hired Nick in 2007.

Steve Francesco

IT Consultant

☞ We have been using Steve's firm for our VOIP system. Steve is always willing to take the call and solve any issues. As an owner Steve is hands on with his clients. *February 27, 2008*

Top qualities: Personable, Expert, Good Value
Richard hired Steve in 2007.

Brian Hamburger

Attorney

☞ We have been using Brian's firm for many years now. Brian's firm has gone out of their way to service us in a very professional manner. They have showed their true professionalism in dealing with all of our matters. I highly recommend them for anybody looking to do RIA work. *February 27, 2008*

Top qualities: Great Results, Expert, High Integrity
Richard hired Brian in 1998, and hired him/her more than once.

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