

Quick Reference Matrix: RIA Communications in Social Media



SEC Compliance

Content Standards Advisers Act Rule 206(4)-1, 17 C.F.R. § 275.206(4)-1 15 U.S.C. § 80b-6 SEC v. Capital Gains Research Bureau, 375 U.S. 180 (1963)				Record-Keeping Requirements Advisers Act Rule 204-2, 17 C.F.R. § 275.205-2 SEC National Examination Risk Alert, "Investment Adviser Use of Social Media," Jan. 4, 2012		Compliance Program Requirements Advisers Act Rule 206(4)-7, 17 C.F.R. § 275.206(7)-1 SEC National Examination Risk Alert, "Investment Adviser Use of Social Media," Jan. 4, 2012				
Prohibition on bad faith, false, or misleading statements	Prohibition on referring to testimonials	Prohibition on referring to past recommendations	If a graph, chart, formula, or other device is referred to	General requirements	SEC's non-exhaustive list of record-keeping factors to consider	General requirements	SEC's non-exhaustive list of compliance factors to consider in adopting a social media compliance program		Third party content considerations	
<p>As advisers owe a fiduciary duty to their clients, all communications must be made with the utmost good faith, with full and fair disclosure of all material facts, and reasonably employed to avoid misleading clients.</p> <p>Must not communicate any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly.</p> <p>Must not communicate any untrue statement of a material fact, or which is otherwise false or misleading.</p> <p>Must not make any communications or series of communications otherwise operating as a fraud or deceit upon a client or prospective client.</p>	<p>Must not refer, directly or indirectly, to any testimonial of any kind concerning the RIA or concerning any advice, analysis, report or other service rendered by the RIA.</p>	<p>Must not refer directly or indirectly to past recommendations.</p> <p>Exception: May refer to past recommendations when accompanied by a complete list of all recommendations made for the previous year that includes the name of each security recommended, the date and nature of each recommendation (e.g., whether to buy, sell or hold), the price at which the recommendation was to be acted upon, and the market price of each such security. Moreover, this list must contain the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."</p>	<p>Must not represent, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy, sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.</p>	<p>Must maintain records of all "written communications received and copies of all written communications sent" relating to "any recommendation made or proposed to be made and any advice given or proposed to be given."</p> <p>Must maintain copies of "each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons" and the reasons for its distribution.</p>	<p>Must determine among other things, whether each social media communication used is a required record, and, if so, the applicable retention period and the accessibility of the records.</p> <p>Must maintain social media communications in electronic or paper format.</p> <p>Must conduct employee-training programs to educate advisory personnel about recordkeeping provisions.</p> <p>Must arrange and index social media communications that are required records and keep them in an electronic format to promote easy location, access and retrieval of a particular record.</p> <p>Must periodically test check to ascertain whether employees are improperly destroying required records.</p> <p>Must consider using third parties to keep records consistent with the recordkeeping requirements.</p>	<p>Must adopt and implement written policies and procedures reasonably designed to prevent to prevent violation of the Advisers Act by the RIA or its supervised persons. The adequacy of these policies and procedures must be reviewed no less frequently than annually.</p> <p>Must designate a supervised individual responsible for administering these policies and procedures as the Chief Compliance Officer.</p>	<p><u>Usage Guidelines:</u> Must have written guidance on the appropriate uses of social media.</p> <p><u>Content Standards:</u> Must consider whether certain content implicates fiduciary duties or other regulatory issue, and must articulate clear guidelines with respect to prohibiting or restricting such content.</p> <p><u>Monitoring:</u> Must effectively monitor social media use, taking into account that many third-party sites may not provide complete access.</p> <p><u>Frequency of Monitoring:</u> Must use a risk-based approach to determine the frequency of social media monitoring, such as periodic, daily, or real-time monitoring.</p> <p><u>Approval of Content:</u> Must consider the appropriateness of pre-approval requirements.</p>	<p><u>Firm resources:</u> Must consider if sufficient compliance resources have been devoted to monitoring social media activity.</p> <p><u>Criteria for Approving Participation:</u> Must consider, without limitation, the reputation of the site, the site's privacy policy, the ability to remove third-party posts, controls on anonymous posting and the advertising practices of other social media sites.</p> <p><u>Training:</u> Must implementing social media training that seeks to promote compliance.</p> <p><u>Certification:</u> Must consider requiring a certification by IARs and advisory solicitors confirming that those individuals understand and are complying with the social media policies and procedures.</p>	<p><u>Functionality:</u> Must continually address any upgrades or modifications to the functionality of the social networking site that affect the risk exposure for the firm or its clients</p> <p><u>Personal/Professional Sites:</u> Must consider whether to adopt policies addressing conducting firm business on personal social media accounts or third-party social media sites that are not operated, supervised or sponsored by the firm</p> <p><u>Information Security:</u> Must consider the information security risks sites pose.</p> <p><u>Enterprise Wide Sites:</u> Must consider whether to create firm-wide usage guidelines if the broker-dealer is part of a larger financial service or other corporate enterprise.</p>	<p>Must consider what types of third party postings are permissible on the firm's social media sites.</p> <p>For example, some firms allow third parties to post messages, links, or articles on the firms' social media sites, while other firms limit third-party use to "one way postings" where the firms' IARs or solicitors do not interact with third parties or respond to third-party postings, and some firms limit third-party postings to authorized users and prohibit postings by the general public.</p> <p>One particularly troublesome type of third-party posting is the use of social plug-ins like the Facebook "like" button. A third party's "like" of a feature on an RIA's social media site could be deemed to be a testimonial if it is an explicit or implicit statement of a client's or clients' experience with an RIA or IAR.</p>