

SEC Issues Social Media Guidelines For Investment Companies

by Bettina Eckerle

The SEC had social media buzzing again. In March, the agency issued updated [social media guidelines for investment companies](#) use of sites like LinkedIn, Twitter, and Facebook. They specifically address the obligation to seek SEC review of materials posted on companies' social media sites under the filing requirements of Section 24(b) of the Investment Company Act of 1940 and Rule 497 under the Securities Act of 1933.

Apparently, many mutual funds and other investment companies were filing materials posted on their social media sites with FINRA unnecessarily. The new guidance provides examples of the kinds of communications that should be filed with FINRA as well as examples of communications that would not trigger a filing requirement. The bottom line is that most materials do not have to receive pre-clearance from FINRA.

Only posts specifically discussing fund performance or promoting a fund's investment merits should be filed for review. The SEC provides the following examples of communications that generally should be filed pursuant to Section 24(b) or Rule 497:

- “Our quarter-end returns have exceeded our expectations!”
- “Please keep in mind the fund's high double-digit returns were primarily achieved during favorable market conditions.”
- “What's your favorite technology to invest in? Read our portfolio manager's views regarding Fund X as an investment opportunity in this space. <website url>.”
- “As you plan for retirement, consider our new lifecycle fund <website url>.”
- “Our ABC Fund was included in the list of best new funds recently published by Morningstar. <website url>”

The guidance from the Division of Investment Management is the first in its “IM Guidance Update” series, which is intended to offer the staff's views on emerging legal issues. It is meant to: “provide meaningful real-life examples in a format that is accessible to all on the SEC's website,” according to the SEC's press release. For more details, go to <http://www.sec.gov/news/press/2013/2013-40.htm>.

And user friendly, it is.

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