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Social Media Amid FINRA Rules

Allison Livezey | Jul 31, 2015

Nowadays, if you are not posting informational videos, tweeting about the latest trend, or marketing your services on your own customized website, you are likely losing potential business opportunities. A recent study by Cogent Reports noted that about 75 percent of financial advisors/brokers use social media to enhance their business. Thus, whether you are comfortable with

technology, or not, it is here; most of your competition is using it; and you are doing yourself few favors avoiding it.

Social media is an easy way to reach hundreds of people who may be seeking your professional assistance and services. However, as with more traditional marketing efforts, it is important to ensure any comments, tweets, updates or other content you might post online is compliant with FINRA's rules, as well as your broker-dealer's social media policies. This article will provide some tips for using online marketing to enhance exposure to potential clients, while avoiding regulatory pitfalls.

According to recent results of the Pew Research Center's Internet Project study, 74 percent of online adults use social networking sites including Facebook, LinkedIn, Twitter and Instagram. Unlike meeting a client face-to-face, or attending a live marketing event, interacting with potential clients via social media allows you to demonstrate your knowledge and expertise to an unknown audience whom you may never have met through more traditional marketing efforts.

Social media platforms provide many opportunities to connect directly to clients and potential clients demonstrating your expertise in your particular area of business. The content that you share creates the potential to invoke a response from your followers, which may then be viewed by *their* followers, possibly leading to a new person discovering your social media profile. The ease of creating a large virtual network through social media makes it a very useful tool for financial professionals to develop new business.

One of the most effective ways to use social media for business is to post original content on your customized website that clients and potential clients will want to read, and use Facebook, LinkedIn, and Twitter to promote that content and drive traffic to your website. In developing content, think about

frequent questions you encounter and topics that clients or potential clients are interested in. Point out industry trends and emerging issues that might impact them. In addition to posting articles to your website, sophisticated social media users may upload podcasts or videos to a site like YouTube through which a new client might discover you in the course of an internet search. Such content can be shared via all of your social media channels, thus helping to raise your visibility and build your personal brand as an investment professional.

Assessing the Risks

While social media has become a valuable business development tool for financial professionals, it comes with some risks. As a member of a highly regulated industry, registered representatives must be very careful about the content they share online. For example, "tweeting" in support of a particular stock could trigger FINRA's suitability rule, thereby exposing the registered representative and his/her broker-dealer to liability should that post be deemed a "recommendation." A third-party's content could even be attributable to you or your firm if you endorse it or take part in the creation of that content (FINRA regulatory notice 10-06).

Additionally, FINRA Rule 2010 requires that any form of static content be approved by your broker-dealer firm before it is posted. For example, a registered representative can create a LinkedIn profile, providing his educational and employment background, links to articles he has written, and contact information. All of that information must be approved by the registered representative's firm prior to it being posted on his profile. A LinkedIn profile also allows for interactive posts, i.e., giving a "thumbs up" to a follower's post. Such engagement, while not subject to the pre-post approval requirements, must be compliant with your broker-dealer's and FINRA's rules.

Failing to monitor your social media posts could also result in some serious consequences. In a recent settlement with FINRA's Department of Enforcement, a FINRA member broker-dealer was fined \$35,000 related to eight of its social media accounts allegedly containing exaggerated, misleading and/or unwarranted statements. The broker-dealer was accused of listing pricing "options" that were inaccurate and failing to explain conditions and exceptions applicable to the listed prices. In another FINRA disciplinary action, a registered representative was suspended for two months and fined \$10,000 related to a settlement of charges that he used unapproved content on websites such as LinkedIn. Specifically, one of the alleged violations was that the registered representative promoted unidentified investment strategies without advising the readers that securities investments involve risks including loss of the entire investment.

Social media can be a valuable and cost-effective marketing tool when used properly and in accordance with regulatory guidelines. Before posting on social media or engaging with others on social media, it is imperative that you become familiar with FINRA's communication rules and how they are applied to statements made on social media sites. Luckily, FINRA has published numerous forms of guidance on this topic in light of the increasing use of the internet by financial professionals. In fact, there are multiple Regulatory Notices on the topic and even podcasts featuring FINRA representatives discussing the application of FINRA Rules to online communications and social networking sites. To protect yourself and your firm from the legal or regulatory issues of a misguided tweet, review your firm's policies and procedures regarding social media use or seek the advice of an attorney with expertise in the securities industry.

Allison J. Livezey is an attorney in the Securities and Investment Professional Liability Practice Group at Marshall Dennehey Warner Coleman & Goggin. She may be reached at ajlivezey@mdwvcg.com.

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