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Investment Advisers Face More Regulation of Social-Media Use

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By Joshua Horn

The use of social media by consumers has logically resulted in the burgeoning use of social media by financial advisers. In this fast changing environment, regulators will have to similarly move fast to ensure that there is proper oversight over this use of social media. I recently wrote in another posting that FINRA will likely focus on the use of social media in the coming years. As FINRA's regulatory framework now stands, registered principals are required to approve static advertisements, such as adviser profiles, that can be found on social media sites. Interactive content, however, does not require pre-approval, but does require member firm supervision. Member firms are also required to keep records pertaining to the content on social media for three years.

The Commonwealth of Massachusetts, in what was probably the first-ever effort, recently announced a program that is surely a precursor to the regulation of the use of social media by investment advisers. Securities regulators in Massachusetts are conducting a survey of investment advisers to determine the types of social media they use. By conducting this survey, the regulators will have a better sense of how social media is being used and, in turn, decide whether and to what extent such activity needs to be subject to regulations. The survey requests information about the social media sites being used. In addition, the survey inquires if investment advisers have implemented compliance protocols to ensure that the use of social media comports with state and federal securities laws. The regulator also requested information regarding whether investment advisers monitor third-party posting on their websites and record retention of social media usage.

The interaction between clients and investments advisers has always been an area of scrutiny for regulators. The use of social media as a form of client communication is only another form of client interaction that will become the subject of more regulation. The Massachusetts survey should be seen as just the first of many efforts for regulators to understand and regulate the use of social media by investments advisers.

The explosion in the use of social media will also present steep challenges for firms creating, implementing and enforcing their compliance policies and procedures over the use of social media. The available avenues for social media interaction increase on a daily basis. The challenge will be for firms to have flexible compliance program that can move with the times and the changes in how social media is used. A similar challenge will be how a firm can actually monitor and supervise the use of social media. These challenges will be great, but it is better for a firm to develop these protocols now, rather than having a regulator impose an obligation as part of a regulatory examination.

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