

Social Media and Compliance

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Social media compliance - our top 3 risk considerations when posting on social media are:

- a) Misleading or forward-looking statements
- b) Posts containing non-public information
- c) Posts concerning security/stock offerings

Social media can not only assist in building a business through its network but also promote its brand. As social media has a global presence, when a firm tries to use the platform to market its brand and promote its business, it can put the firm at risk, as rules and regulations are disparate in different jurisdictions.

Most investment management firms use social media platforms to promote themselves and highlight things they do different from their competitors. Regulators are taking a closer look at these social media posts to ensure these firms do not cross the line. E.g. The Regulator is against Individual/solicitors endorsing a particular stock or an indirect pitch about a particular fund on the social media platform.

An example where the SEC fined an asset management firm for making false statements is provided below.

The asset management company assured its clients employing its tax-loss harvesting strategy that it would monitor all client accounts for any transactions that might trigger a wash sale, which can diminish the benefits of the harvesting strategy, but failed to do so. The SEC also found the company had improperly retweeted prohibited client testimonials, paid bloggers for client referrals without the required disclosure and documentation, and failed to maintain a compliance program reasonably designed to prevent violations of securities laws.

A separate SEC order found that another asset management company also made a series of misleading statements about its investment performance. According to the SEC order, from 2016 until April 2017, it had posted on its website and social media purported comparisons of the investment performance of clients versus those of two competitors. The performance comparisons were misleading because the asset manager included less than 4% of its client accounts, which had higher-than-average returns. Further, the asset management company compared its client's returns with rates of return that were not based on competitors' actual trading models. The SEC's order also

found that the asset manager had failed to maintain not only the required documentation, but also a compliance program reasonably designed to prevent violations of securities laws.

FINRA's, the SEC's, and FFIEC's social media compliance guidelines all have differences, but they share the following key principles**:

- 1) Policies must be set for social media use, and employees should be trained to ensure their social media use complies with regulatory requirements.
- 2) Social media use for advertising or communications must be treated in accordance with regulations governing advertising and communications.
- 3) Existing rules governing recordkeeping for advertising and communications must be followed for social media.
- 4) Firms must effectively "monitor" both employee posts and third-party posts on social media sites to ensure compliance.

Investment management firms should ensure individuals/solicitors using social media are armed with clear guidance/guidelines on appropriate and inappropriate uses of social media. Challenges most investment managers face are that these individuals do not stick to the guidelines and procedures most times, exposing the firms to regulatory risks. For example, an individual/solicitor may post about the current political situation, blaming one of the leaders for market movements. This can bring the concerned investment management firm under scrutiny.

Firms should also put a process in place to monitor social media periodically and ensure the use of copyrighted photographs from third-party sites. Further, controls should be in place to ensure all Compliance-approved content is posted on social media as opposed to after-the-fact reviews.

Finally, investment managers should set criteria participants need to fulfil (such as knowledge of dos and don'ts) before posting on social media.

Acuity Knowledge Partners is an influential player in the global market, offering compliance expertise and a wide array of other services. We have a pool of talented professionals experienced in reviewing social media materials and identifying risks. Further, they are equipped with knowledge to mitigate such risks in accordance with SEC guidelines and regulations. Please refer to Acuity's compliance offerings in details [here](#).

Source

**<https://www.ironmountain.com/resources/general-articles/t/the-current-state-of-social-media-compliance>

<https://www.sec.gov/about/offices/ocie/riskalert-socialmedia.pdf>

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