

Finra, SEC rules constrain advisers in blogosphere

Blogs largely viewed as advertising, not discussion forums

By Davis D. Janowski
September 1, 2008

Advisers who rely on blogs to communicate with their clients view the activity as a harmless, inexpensive technology.

In contrast, the New York and Washington-based Financial Industry Regulatory Authority Inc.'s existing rules categorize blogs as advertisements that require supervisory review. Meanwhile, the Securities and Exchange Commission maintains that blogs should be treated as a company statement.

"We have looked into this, and we considered having a blog to be an important tool but can't get past the compliance end of it. Every blog is essentially considered advertising, and therefore the oversight seems to take away from the spontaneity and intimacy of the process," said John E. Ledford, adviser and president of Orlando, Fla.-based Ledford Financial Inc., which has \$100 million in assets. "'Obtuse' is probably the right verbiage when it comes to interpreting the regulations and guidelines for having a blog."

To clarify the regulations, a blog that "is used for the purposes of communicating with the public regarding an adviser's products or services is going to be considered advertising and therefore is subject to review," said Herb Perone, a spokesman for Finra. John Heine, an SEC spokesman, did not make a source available by press time.

In Mr. Ledford's view, the rules make a blog verboten for most affiliated advisers and registered representatives unless there is principal or broker-dealer review of the website, and that means that their blogs will likely underwhelm users.

"I think that an interactive blog is a wonderful tool, but it's impossible for advisers to comply with the Finra rules and maintain one that is highly interactive, because they have to be principal-approved," said Paul Tolley, chief compliance officer for Commonwealth Financial Network in Waltham, Mass.

While the scenario for affiliated advisers and registered representatives does not look promising, independent advisers and fee-based planners have a bit more leeway under the regulations, according to attorneys.

COMPLIANCE SCRUTINY

Because of disclosure and anti-fraud considerations, the information that advisers disclose on blogs requires the same compliance scrutiny as corporate press releases, said Jon Neiditz, an attorney with Nelson Mullins Riley &

Scarborough LLP in Columbia, S.C.

"The problem with blogs is that they create the illusion that informal public communication is taking place, and it's that illusion that gets some companies and managers in trouble," he said.

To ensure that they stay in compliance, advisers need to be mindful of several nuances that were included in the SEC's proposed rule. "The anti-fraud provisions [of Regulation Fair Disclosure] apply to the blog — even though the blog is a loose, easygoing, informal format. If you are speaking to investors, you have to be aware of what you are saying," said James Hamilton, a principal analyst and attorney with Wolters Kluwer Law & Business, a Riverwoods, Ill.-based provider of corporate and securities information. "The guidance was really intended for corporate websites."

In August 2000, the SEC adopted Reg FD to prohibit the selective disclosure of material non-public information about publicly traded companies.

Online advisers should stick to discussions of their general investment philosophy; avoid being overly specific and not mention, for in-stance, specific equities or products by name; and avoid discussions of transactions — especially anything boastful that can raise fraud concerns, Mr. Hamilton said.

"You can't have the investor click on a waiver in order to read or use the blog. There are strong anti-waiver laws," Mr. Hamilton said.

One adviser says he maintains a blog so clients are aware of the performance of their portfolios.

"I'm pretty much focusing on portfolio management, so the blog is a way for me to share my [overall] performance with my clients," said Matthew McCracken, an adviser who maintains a blog on his homepage. He is the founder of McKinney Avenue Capital in Dallas, which has \$12 million in assets under management.

"It's there for both marketing and client communication, and I look at it as enhancing my communications with clients more than it replacing anything. I still send physical quarterly reports," Mr. McCracken said.

He agrees with Mr. Hamilton's and Mr. Neiditz's views of the regulations — views that a Texas state regulatory audit that he went through a year ago underscored.

"They had printed out every single page of my site," Mr. McCracken said. "Their advice was, 'You've got to make sure you aren't making any recommendations.' You can keep it general. I'm bullish on tech stocks but not specific. I bought IBM or sold Microsoft on Tuesday for a profit of 12%," Mr. McCracken said, referring to IBM Corp. of Armonk, N.Y., and Microsoft Corp. of Redmond, Wash.

Donald B. Cummings Jr., a principal with Blue Haven Capital LLC, also uses his blog as part of the firm's diversified-communications strategy as well as opinions on topics as varied as politics, travel and the economy. "Our clients enjoy the ramblings we put up there," he said, adding that he monitors traffic to the blog, so he knows the site is well-read.

Geneva, Ill.-based Blue Haven has \$10 million under management.

"We don't make specific recommendations. My strength is certainly fixed income rather than choosing equities, but if I were a stock jockey, I'd be very careful about putting recommendations there," Mr. Cummings said.

For additional information, including links to the guidelines, regulations and blogs that were mentioned, visit the online version of this story at investmentnews.com/bloggging.

Links for financial advisers interested in blogging

Advisers seeking to educate themselves on regulations that govern blogging have had to surf through a dizzying number of websites to gather the information — until now.

The links below comprise online regulators and organizations, interpretive white papers from industry experts and blogs that were mentioned in the story.

Relevant guidance from Financial Industry Regulatory Authority Inc. of New York and Washington

[“Guide to the Internet for Registered Representatives”](#)

(See “Communications with the Public” [Rule 2210])

[“FINRA Provides Guidance Regarding the Review and Supervision of Electronic Communications”](#)

The most relevant Securities and Exchange Commission guidance and interpretations

While the regulatory guidelines were designed for corporations that were filing with the SEC, industry experts said that they can be interpreted — for now at least — to represent the SEC’s views on advisers’ blogs.

Searching the following two SEC documents for the keyword “blog” will generate the most relevant information.

[“Commission Guidance on the Use of Company Web Sites”](#)

Another SEC publication that provides guidance to advisers regarding their website is

[“Information for Newly-Registered Investment Advisers”](#)

(Read the “Requirements for Investment Advisers that Advertise their Services” section.)

An overview of the SEC guidelines provided by the law firm of

[White & Case LLP](#) of New York

(See the blogs and e-forums section on Page 6.)

A white paper by James Hamilton, securities analyst with the Wolters Kluwer NV of Amsterdam, Netherlands

[”SEC Guidance on Use of Company Websites in the Internet Age”](#)

Certified Financial Planner Board of Standards Inc. in Washington

CFP Board spokesman Chris Wloszczyzna said that the board’s recently updated [Standards of Professional Conduct](#) made no mention of blogs. If a planner wants start a blog that includes discussions of their work, he should make sure that such writings did not conflict with the code of conduct.

Advisers need to pay particular attention to Rules 2.1 and 2.2, which pertain to information disclosed to clients and prospects.

Adviser blogs referenced in the story

[Blue Haven Capital LLC](#) of Geneva, Ill.

[McKinney Avenue Capital](#) of Dallas

E-mail Davis D. Janowski at djanowski@investmentnews.com.



Jon Neiditz: Information disclosed on blogs needs compliance scrutiny.

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