



Investment Management ALERT ■

MARCH 18, 2013

SEC Issues Guidance Update on Social Media Filings by Investment Companies

On March 15, 2013, the staff of the U.S. Securities and Exchange Commission (SEC) published a guidance update to clarify the filing requirements for certain electronic communications by mutual funds and other registered investment companies ("investment companies"). Specifically, the guidance from the Division of Investment Management ("IM Guidance") seeks to make clear the obligations of investment companies with respect to real-time electronic materials posted on their social media sites ("interactive content").

The Financial Industry Regulatory Authority (FINRA) requires investment companies to file certain advertisements for its review. The SEC staff has received inquiries regarding whether certain interactive content should be filed pursuant to Section 24(b) of the Investment Company Act of 1940 or Rule 497 under the Securities Act of 1933 if it is not required to be filed under FINRA Rule 2210. The IM Guidance articulates the staff's position that certain interactive content need not be filed and offers examples of the types of interactive communications that the staff believes would not trigger a filing requirement. The IM Guidance also provides examples of communications that would be subject to a requirement to file with FINRA. The staff notes that "[w]hether a communication need be filed depends on the content, context, and presentation of the particular communication or set of communications and requires an examination of the underlying substantive information transmitted to the social media user and consideration of any other facts and circumstances, such as whether the interactive communication is merely a response to a request or inquiry from the social media user or is forwarding previously-filed content."

The IM Guidance is the first in a series of updates that will provide the staff's views on current legal issues. In the press release announcing the guidance, the staff explains the purpose of each guidance update is to increase transparency and enhance compliance with federal securities laws and regulations. "Today's inaugural IM Guidance Update on social media is intended to help firms strengthen their compliance efforts by providing meaningful real life examples in a format that is accessible to all on the SEC's website," said Norm Champ, Director of the Division of Investment Management. "We expect future guidance updates will highlight other relevant issues for funds, advisers, and the public."

You may find a link to the IM Guidance here:

<http://www.sec.gov/divisions/investment/guidance/im-guidance-update-filing-requirements-for-certain-electronic-communications.pdf>

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