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SEC Won't Rewrite Advisor Compliance Rules for Social Media.

ARLINGTON, VA. — As the SEC contemplates a framework for how advisors can incorporate online social tools into their practice, many of the established principles concerning compliance, record-keeping and anti-fraud will hold steady in the era of new media, according to a senior commission attorney.

Melissa Gainor, senior counsel at the SEC's Investment Adviser Regulation Office, explained that the commission isn't envisioning a complete rewrite of its rules to account for the increasing use of social media within advisory practices. In remarks during a panel discussion at the Investment Adviser Association's compliance conference, Gainor explained that advisors will be expected to keep records about the content they post on social sites just as they do with other materials on traditional channels.

"Broadly, firms that communicate through social media must retain records of those communications covered by the record-keeping rule. It's really the content that's determinative rather than the form of communication used," Gainor said.

SEC GUIDANCE

Similarly, she noted that the SEC's advertising rule has been interpreted broadly in the past, and much of the guidance for promotional materials will carry over to the use of online tools like blogs, Facebook, Twitter and LinkedIn.

"Generally it doesn't depend on the type of technology or device used," she said.

The SEC has produced guidance directly addressing the use of social media within the practice, but for compliance experts like Michael Sherman, a partner with the firm Dechert LLP, the area remains distressingly vague. The proliferation of social tools — and the freewheeling nature of comments on the Web — has introduced considerable uncertainty into areas like endorsements and testimonials, a confusion that the SEC could address with more detailed examples in its guidance.

"It's as though we got flying cars but we never revised the rules of the road for highways," Sherman said.

Incorporating social media into the practice has been the subject of considerable debate in advisor circles in recent years. Consensus has been in short supply, but advisors are increasingly coming to believe that as they pursue a younger generation of clients, it's no longer a viable strategy for firms simply to have in place a policy "saying don't use it," according to John Thomas, Jr., managing director at BNY Mellon Asset Management.

"They have to have a presence," Thomas said.

And there are a number of third-party tools such as PageFreezer, Socialware and Smarsh to help firms in regulated industries remain compliant, offering on-demand services like archiving and

monitoring.

SETTING BOUNDARIES

Even with the aid of those services, compliance professionals say that they still need to set boundaries on what advisors can use within their practice. Marla Roeser, director of compliance and risk management with Convergent Wealth Advisors, suggested that it's a simpler exercise to keep a white list of social sites advisors can use rather than try to maintain a roster of sites that are off limits at a time when new social tools and applications are sprouting like weeds.

"Instead of prohibiting certain sites, I would list the sites that they're authorized to use," she said. "You have to have the resources to monitor this activity. You have to be prepared for that."

In Convergent's case, that leaves just LinkedIn and Twitter available for use inside the practice, but even limiting usage just to those two, Roeser still has to navigate how the content that her firm's advisors are pushing out meshes with the SEC's rules.

Gainor acknowledged that a risk alert on social media that the SEC's Office of Compliance Inspections and Examinations issued left considerable gray areas, and said that the commission's work in that area had been slowed by its push to enact regulations under the JOBS Act (which also touched on social media, but in a different context). In the meantime, in the absence of more explicit guidance, the SEC still expects RIAs to be diligent in monitoring the content they publish on social sites.

"One of the things that you need to consider when you're developing your compliance policies and procedures is your ability to monitor," Gainor said. "If you don't have the ability to monitor, it begs the question as to how broad you can allow social media use."

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