CARLTON FIELDS

SEC “Likes” Social Media for Investment Advisers

Expect Focus

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The SEC staff views social media as a useful tool that helps consumers conduct their own due diligence on investment advisers. In a recent Investment Management Guidance Update, the staff stated that, under certain circumstances, registered investment advisers’ publication of public comments from social media sites would not violate the Investment Advisers Act rule prohibiting testimonials in advertisements.

Rule 206(4)-1(a)(1), which prohibits an investment adviser from publishing any statement of a client’s experience with a registered adviser, was adopted to address the concern that such advertisements of client testimonials tend to emphasize only favorable comments and may thus be misleading. However, under the SEC staff’s Update, an adviser’s social media or other real-time website may include testimonials consisting of public comments from **a real-time site that is independent of the adviser** without violating the rule, if a number of conditions are met.

The conditions are designed to ensure that, among other things:

- all comments, good and bad, are posted on the independent site and repeated on the adviser’s site, and
- neither the independent site nor the adviser influences the substance or manner of presenting the comments or editorializes in any way that might cause the viewer to think better or worse of the adviser.

Pursuant to the staff’s Update, an adviser can use any medium to advertise the fact that public comments about the adviser may be found on the independent site (and include the logo of that site). But the adviser may only actually *publish* those comments via a real-time website. This allows readers to instantaneously view the most recently posted comments, which they cannot do in more static media such as print, television, or radio.

Capabilities

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