FINRA Issues Additional Guidance on Social Media Websites and the Use of Personal Devices for Business Communications

The Financial Industry Regulatory Authority (FINRA) has published additional guidance on how advisers can use Facebook, Twitter and other social media sites to communicate with their clients. Regulatory Notice 11-39 (Social Media Websites and the Use of Personal Devices for Business Communications) released in August 2011, provides further clarification of the guidance provided in Regulatory Notice 10-06 (Social Media Web Sites) in January 2010.

Since the release of Notice 10-06, FINRA has received numerous inquiries regarding the application of the rules. Notice 11-39 responds to these questions by providing further clarification concerning application of the rules to new technologies. It is not intended to alter the principles or the guidance provided in Notice 10-06. The August Notice contains 14 questions and responses to these inquiries relating to Recordkeeping; Supervision; Links to Third-Party Sites; and Data Feeds.

Note that the SEC has not issued formal guidance for investment advisers as it relates to social media, instead focusing on applying existing rules. The SEC recently began a sweep of advisers to gather information about their use of social media. Hear from industry experts on the best practices for CPAs when using social media via the AICPA’s July 21st web seminar.

Recordkeeping Responsibilities
Whether or not a firm is required to keep records of communications made through social media depends upon whether the content of the communication constitutes a business communication. The firm must be able to retain, retrieve and supervise business communications regardless of whether they are conducted from a device owned by the firm or by the associated person. Firms and associated persons may not sponsor social media sites or devices that include technology which automatically erases or deletes the content. Firms should also be able to separate business and personal communication by requiring that the associated persons use a separately identifiable application on the device for their business communications. All communications completed by members, brokers, or dealers relating to a firm’s business (including originals of all communications received, copies of all communications sent, and approvals granted) must be retained for a period of not less than three years.

Supervision
As part of its responsibility to supervise the activities of each associated person, a registered principal must review prior to use by consumers, any social media site that an associated person intends to employ for business purpose. Firms must conduct appropriate training and education concerning their policies, including those related to social media, and follow-up on red flags that may indicate that an associated person is not complying with the firm’s rules.

Links to Third Parties
Firms may not establish a link to any third-party site that the firm knows or has reason to know contains false or misleading content. A firm should not include a link on its website if there are any red flags that indicate the linked site contains false or misleading content. A firm that co-brands any part of a third-party site, such as by placing the firm’s logo prominently on the site, is responsible for the content of the entire site.

Data Feeds
Firms must adopt procedures to manage data feeds into their own websites. Firms must be familiar with the proficiency of the vendor of the data and its ability to provide data that is accurate as of the time it is presented on the firm’s website. Firms should regularly review aspects of these data feeds for any red flags that indicate that the data may not be accurate, and should promptly take necessary measures to correct any inaccurate data.