

SEC Issues Four Pronouncements Relating to Social Media

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January 5, 2012 — On January 4, 2012, the SEC issued four pronouncements relating to social media, two of which focus specifically on the use of social media by investment advisers. The pronouncements come approximately one year after the SEC's Office of Compliance Inspections and Examinations (OCIE) conducted its social media compliance sweep of advisers, and reflect the work of the SEC's Division of Enforcement, OCIE, and Office of Investor Education and Advocacy. Taken together, the pronouncements, as described below, represent a coordinated effort by different arms of the SEC to address investor protection concerns relating to social media.

[Investor Alert: Social Media and Investing – Avoiding Fraud](#) The Investor Alert warns investors to "use caution when using social media when considering an investment" and emphasizes that being an "educated investor" is the "key" to avoiding Internet investment fraud. Noting that social media, such as Facebook, YouTube, Twitter, and LinkedIn, has become a "key tool" for U.S. investors for research on stocks, background information on advisers and broker-dealers, and other information, the Alert offers the following five tips to help investors avoid online fraud:

1. Exercise "extreme caution" regarding unsolicited investment offers
2. Look out for common "red flags" such as offers that sound too good to be true, promises of guaranteed returns, and pressure to buy an investment
3. Look out for "affinity fraud" that involve investment scams on members of identifiable groups,
4. Be thoughtful about privacy and security settings
5. Ask questions and "check the truth of every statement you are told about the investment"

In essence, the Alert reminds investors of the need to exercise care and perform appropriate due diligence when conducting online activities that pertain to investment matters. The Alert also provides examples (including citations to recent enforcement cases) of investment scams involving social media and the Internet, including "pump and dump" schemes, fraudulent "touting" of stocks,

unregistered high yield investment scams, and fraudulent Internet-based offerings. [Investor Bulletin: Social Media and Investing – Understanding Your Accounts](#) The Investor Bulletin provides investors with a number of tips when establishing an account on a social media website, such as Facebook or Twitter. The tips relate to privacy settings, biographical information, account information, "friends" and contacts, site features, password and other online security tips, links, and mobile devices. The tips provide, in an easy-to-read format, basic common sense guidance that one might consider when conducting any type of online activity. In one instance, however, the Bulletin calls the reader's attention to the fact that a financial professional's social media website may not necessarily be firm-sponsored and recommends that an investor should seek a firm-sponsored method of communication when discussing his or her account or investments. [National Examination Risk Alert: Investment Adviser Use of Social Media](#) The National Examination Risk Alert identifies a list of 13 factors pertaining to social media for advisers to consider in evaluating the effectiveness of their compliance programs. The factors cover a wide range of matters such as usage, content, monitoring, resources and training, personal sites, and information security, among others. The Risk Alert cautions that the factors are not exhaustive nor do they provide a safe harbor or "checklist" for SEC examiners. At the same time, the Risk Alert encourages advisers to consider them in complying with their obligations under the federal securities laws. Of particular note is the fact that the Risk Alert includes the use of social media by **solicitors** within the ambit of an adviser's compliance program. Also of note is the Risk Alert's discussion of **testimonials** and the expression of the SEC staff's belief that, "depending on the facts and circumstances, the use of 'social plug-ins' such as the 'like' button could be a testimonial under the Advisers Act." By way of example, the Risk Alert indicates that if the public is invited to "'like' an IAR's biography posted on a social media site, that election could be viewed as a type of testimonial prohibited by rule 2006(4)-1(a)(1)." The Risk Alert addresses many of the same topics addressed by FINRA last year in [FINRA Regulatory Notice 11-39](#) (August 2011) and [FINRA Regulatory Notice 10-06](#) (January 2010), including such topics as recordkeeping, training, supervision, personal site usage, and third-party sites and content. [Order Instituting Proceedings: In the Matter of Anthony Fields, CPA d/b/a Anthony Fields & Associates and d/b/a Platinum Securities Brokers \("Fields"\)](#) The SEC Order instituted administrative and cease-and-desist proceedings against Fields, a registered investment adviser, and alleged that Fields made fraudulent offers of securities through social media websites and engaged in other federal securities law violations. The alleged fraudulent offerings include fictitious bank guarantees and medium term notes offered through LinkedIn postings. Other allegations include (1) the filing of a false Form ADV with false representations that Fields had \$400 million in assets under management and managed assets for pooled fund vehicles, companies, and high net worth individuals; (2) dissemination of false and misleading information through Field's website; (3) failure to adopt written policies and procedures reasonably designed to prevent violation of the Advisers Act and rules thereunder; (4) failure to maintain required books and records; (5) failure to establish and maintain a written code of ethics; and (6) acting as a broker without being registered. The Order requires a public hearing for the purpose of taking evidence on whether the allegations are true and what, if any, remedial action against Fields would be appropriate in the public interest.

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