

INTERNET CHECKLIST - WEBSITES

Communicating by e-commerce involves a look at advertising rules, licensing/registration, and other standards of ethics and doing business.

- Is web information current? Does it contain any statement that is dated?
- Is web information consistent with the Form ADV disclosure document, substitute disclosure brochure, marketing brochure, and Advisory Agreement?
- Web information is considered advertising and generally construed as soliciting business in all US and foreign jurisdictions. This would require licensing/registration/notification, as may be the case. In the alternative, if you are not transacting business on the Internet, and are only offering information about products and services, there are safeguards you can take to avoid registration. You can build a “gateway” and block entry by residents of states where you are not registered. A second method would be to add disclaimer language to the web pages. (See sample language below.) While most states acknowledge the disclaimer procedure, it may not be universally accepted. If on the other hand, you are soliciting business, transacting business, and/or providing personalized advice on the web, multi-state (and potentially international) registration is required.
- The more interactive the site, or the more customers provide information on the site, the more likely the advisor is actually doing business on the site and registration would apply.
- A heavily interactive Web site might give the impression that visitors to the site are getting personalized investment advice. Consider (if appropriate) a disclaimer stating that information on the site is not meant to be personalized for those looking at it.
- Follow all advertising rules. The Investment Advisers Act of 1940 outlines 5 areas of advertising that are deemed fraudulent, deceptive, or manipulative. 1) Testimonials are prohibited. 2 - 4) Past specific recommendations [performance ads], graphs/charts/formulas, and statements of free services are restricted and conditions must be met, to be in compliance. 5) The Act contains a general anti-fraud prohibition, “which contains any untrue statement of material fact, or which is otherwise false or misleading.”
- Follow advertising standards. Ads should be fair, balanced, and not misleading. Disclose risk factors.
- E-mail, web sites, blogs, instant messaging, chat rooms, message boards need to be supervised to ensure affiliates are in compliance with ethical standards. Touting stock to manipulate the market is prohibited. Internet communications are subject to recordkeeping requirements.
- Links to other web sites should be clearly labeled. It should not be misleading as to whose web site a client is on. Links to regulatory web sites should not imply any endorsements.
- Disclosures should be included in several locations within the web site and in close proximity to the related material. This is important because visitors may jump from one Web page to another, and come to the site from different entry points.
- If you do transact business over the Internet, then it may be prudent to include your Privacy Notice and Opt Out provisions as pursuant to the rules on Privacy Of Consumer Financial Information. Furthermore California’s Online Privacy Protection Act requires all businesses [in all states] that collect any personal information from a California consumer (including simply an e-mail address) to post an online privacy policy on the web.

SAMPLE INTERNET DISCLAIMERS

REGISTRATION:

INSTRUCTIONS:

The following (or a similar) disclaimer should appear on the home page, in a font size equivalent to other writing on the same page. The disclaimer should be repeated on all (or most) other pages as well. As an alternative to having the full disclosure on the home page, you can put a link on the home and other pages that states, “For Regulatory Information – Click Here.”

It is equally important for federal covered investment advisors to use the disclaimer because of notice filing requirements and IA Rep licensing.

“[This firm] is [a registered investment advisor (federal or state) and/or broker/dealer]. [This firm] may only transact business or render personalized investment advice in those states and international jurisdictions where we are registered/filed notice or otherwise excluded or exempted from registration requirements. The purpose of this web site is for information distribution on products and services. Any communications with prospective clients residing in states or international jurisdictions where [this firm] and its [advisory affiliates or registered representatives] are not registered or licensed shall be limited so as not to trigger registration or licensing requirements.”

LINKS TO OTHER SITES:

INSTRUCTIONS: Linking to another site involves the use of two disclaimers. The first disclaimer will appear as standard text on the page that has links. The second disclaimer will appear on a pop-up screen once a link has been clicked.

1. On top of the page/section that has links:

“PLEASE NOTE: These links are provided as a convenience and a link does not imply [this firm’s] sponsorship or approval of any of these sites. When you access one of these web sites you are leaving [this firm’s] website.”

2. Technology Notes for Pop Up Screen:

After a link to an outside website is clicked, a new screen pops up. (See sample verbiage below this box.)

The instructions in this pop up screen (per the sample below) may indicate that the link needs to be clicked (again), however generally (after a few seconds pass) the connection is made even if the link is not clicked. Your technology may differ – this is just a likely scenario.

“You are now leaving [this firm’s] web site. The link you have selected is located on another server. Please click on the link below to leave [this firm’s] site and proceed to the selected site.
GO TO URL: whatevertheaddressis.com.”

If you want information about services & products for Investment Adviser compliance please call:

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