INVESTMENT ADVISER AND MUTUAL FUND WEBSITES
A Checklist of Legal Issues

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✓ Answer the threshold question: Whose website is it? The adviser’s? The fund’s? The distributor’s? Another party’s? A combination?

✓ If more than one party is involved, address their various roles and responsibilities, including such issues as:
  • Who will make any necessary regulatory filings?
  • How will costs be allocated among the relevant parties?
  • Who will ensure compliance with regulatory recordkeeping requirements?
  • Is there a need for an agreement among the relevant parties to assign risk/responsibility for the site and its content?

✓ Treat the website – or the “sales” portions of it -- like an “ad” or like “supplemental sales literature.”
  • Adhere to all regulatory requirements applicable to ads/sales literature.
  • Keep general anti-fraud principles in mind (no material misstatement or omission).
  • Accompany performance with appropriate legends and disclosures.
  • Avoid language that could be misconstrued as suitability or investment advice.
  • Accompany the site by the statutory prospectus if fund shares are offered.

✓ “Gateway” or “disclaim” all hyperlinks to outside websites.

✓ Take reasonable precautions to safeguard the site and any personal identifying information collected from the site.

✓ Restrict access (using passwords, for example) to sensitive information on the website except for pre-qualified or pre-authorized users (such as pre-qualified accredited investors or RIAs).

✓ Obtain proper client/shareholder consent to electronic delivery of any regulatory documents delivered via the website.

✓ Post the relevant privacy policy on the website.

✓ Label the website for U.S. investors only (if the case).

✓ Ask website visitors where they reside in and block access to any fund information for website visitors in jurisdictions where the fund is not “blue skied” or exempt.

✓ Take appropriate steps to avoid subsequent, direct communications with prospective advisory clients in jurisdictions where the investment adviser is not registered or exempt.

✓ Limit any “financial calculator” parameters to reasonable ranges.

✓ Label all historical postings as archival or by date to avoid having them go “stale.”

✓ Avoid misuse of copyrighted or proprietary information belonging to others.

✓ Post fund portfolio holdings on the website only consistent with the fund’s policies and procedures on disclosure of fund holdings.