

## **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.