Social Media Policy and Procedures for Compass Capital Corporation

It is the policy of Compass Capital Corporation (CCC) as investment adviser to allow its IARs to post/interact through professional social media accounts consisting of blogs and/or LinkedIn accounts subject to the following policies relating to their permitted usage of such accounts.

To meet its supervisory obligations CCC requires all of its corporate social media accounts to be loaded into the firm's social media archival system via Global Relay for supervision and archiving.

In addition, each investment adviser representative who uses social media shall:

1. Notify CCC of their existing accounts and any new account or blogs he/she may have or wishes to open
2. Provide CCC with the name of the account for input into the archival system;
3. Sign an authorization, giving CCC authority to monitor the account for purposes of its supervisory obligations

Social media policies for investment adviser representatives are in most cases similar to if not identical to the investment adviser's pre-existing considerations with respect to its advertising policies under 206 (4)-1. The CCC social media policies generally:

1. Prohibit posting of or linking to comments or content that is harassing, defamatory, indecent or misrepresents the stated policies, practices, performance returns or investment strategies provided by CCC advisers.

2. Require IARs to be honest and consistent with prior professional comments the IAR has provided to clients while providing investment advisory services or in presentations previously made on behalf of the firm.

3. Not include IAR comments that are in retaliation to negative posts or comments received on the IAR's site. If warranted, the IAR should work through the compliance department to address any issues that directly relate to customer issues identified in such posts.

4. Prohibit the acceptance of third party testimonials or recommendations, if the IAR has mentioned or otherwise indicated that he/she provides investment services on the social media site. While a testimonial as to the IAR's character may or may not be allowable, the

SEC has not as yet given any leeway to the general prohibition against the use of testimonials by investment advisory professionals, at least if the communication is considered an advertisement. While the IAR cannot delete previously accepted testimonials, it is possible to block them from view. If the IAR has previously accepted a testimonial, he/she should go into their social media site and follow the steps to block from view any testimonials that he/she currently may have. Failure to reject or block previously accepted testimonials might subject the IAR to the investment adviser placing restrictions on the IAR's future social media usage or to possible disciplinary sanctions.

5. Not include any favorable comment on the IAR's social media posts or blogs from themselves through other social media accounts the IAR may have.

6. Protect the customer's privacy by prohibiting the use of a customer's name address, identification information, financial, account holdings or any other information specific to a customer on the IAR's social media site.

7. Prohibit the IAR from using IM's and texting as there is no effective way to supervise and archive those communications.

8. Require any IAR who is also a registered representative to notify their broker dealer prior to making any LinkedIn profile change or other change that would be considered to be static content for pre-approval or content that would be considered sales literature prior to implementing the change on their social media site.

9. Prohibit IARs from providing legal or tax opinions or making specific investment recommendations on their social media site.

10. Prohibit the IAR from making any negative references about the investment adviser on his/her social media site, or from making any misrepresentation as to his/her title, responsibilities or function with the adviser.

11. Require the IAR to refrain from using superlatives, exaggeration or anything that might suggest a guaranteed return or guaranteed successful results.

12. Require the IAR to refrain from the use of industry jargon, consider his/her audience and prepare any posted materials so that his/her least sophisticated customer can clearly understand them.

13. Prohibit the use of a chart, graph, formula or other tool on the IAR's social media site that to be used in determining which securities to buy or sell or when to do so.

14. Require the IAR to follow standard performance guidelines in presenting adviser

performance including the requirement to show returns net of applicable advisory fees and other required charges on the account.

15. Not offer any report, service, or analysis labeled as free on the IAR's social media site or blog unless it is in fact free with no further obligation or commitment.

16. Not disclose any material non public information in the IAR's possession

17. Not discuss or disclose the firm's proprietary information, intellectual property interests or other trade secrets on their social media site.

18. Use appropriate disclosures as to the IAR's business affiliations, relevant conflicts of interest and correctly attribute ownership of any comments, statements or quotes to their originator.

19. Prohibit any reference to past specific successful recommendations of securities, unless, the IAR provides a separate detailed list of all past recommendations good or bad over at least the past year, with the name of the security, the date recommended, and the price at which it was recommended. The IAR needs to include a legend that past performance is not an indication of future performance with the materials. This limits the IAR or the investment adviser from advertising past success, unless it is fairly presented. The IAR also needs to disclose all material facts relating to any recommendation. IAR posts as advertisements must not have any untrue statement of material fact or otherwise be false or misleading

Books and Records

While it is unclear whether all social media should be considered an advertisement and as such required information to be maintained for a minimum of five (5) years, as a best practice, the investment adviser should probably capture any social media content that relates at all to the firm, whether it be in the form of a mention, a contact, a marketing blurb, a blog, a performance report, or a LinkedIn profile. While early efforts to comply with the provisions for maintenance of social media content have attempted to us hard copy reproductions of profiles, sites and comments as documentation, supervision under this type of process is virtually impossible to perform. CCC is not easily able to verify whether the investment adviser has received all of the content and because the adviser doesn't have mediation capability, the adviser is unable to compare the hard copies to all of the activity in a social media account.

Advertising: Any communications to more than one person

Pre-approval of static posts to a social media site is not a regulatory requirement under

the Advisers Act, unless required under the firm's policy. No specific formal archival process is mandated for maintenance and mediation of social media but as with email, the SEC and the states expect a formal archival process.

Supervisory policies

CCC will periodically monitor the social media archive through use of mediation software to identify any instances of misuse with respect to the requirements above. Should inappropriate comments or materials be found on an IAR's social media site, an in-depth review of the IAR's other social media content will be conducted.

Action to be taken by the investment adviser shall be dependent on the results of the investigation and may include:

a) Remedial training on investment advisor advertising and the adviser's social media policies.

b) Prohibiting the IAR from any future use of the social media site.

c) Suspension or termination of employment as an IAR.

Code of Ethics

CCC may if it so chooses include specific standards for IAR usage of social media under its investment adviser Code of Ethics. Although not a mandatory COE provision, many of the specific investment advisory policies relating to social media usage are consistent with ethical conduct and would be valid as conditions under the IAR's annual Code of Ethics attestation. By specifically including some of the requirements for social media communications under its Code of Ethics, the investment adviser will have the ability to require the IAR to acknowledge an
understanding of the policies under the Code and report any Code violations they become aware of which helps the investment adviser with its oversight function.

For Further Reference

See the SEC IM Guidance update March 2014 No. 2014-04 which is attached.

IM Guidance Update

March 2014 | No. 2014-04

GUIDANCE ON THE TESTIMONIAL RULE AND SOCIAL MEDIA

From time to time, we have been asked questions concerning the nature, scope and application of the rule that prohibits investment advisers from using testimonials in their advertisements. In addition, in the past several years, we have been asked a number of questions concerning investment advisers' use of social media. We are now providing this guidance concerning registered investment advisers' use of social media and their publication[1] of advertisements that feature public commentary about them that appears on independent, third-party social media sites.[2]

We understand that use of social media has increased the demand by consumers for independent, third-party commentary or review of any manner of service providers, including investment advisers. We recognize that social media has facilitated consumers' ability to research and conduct their own due diligence on current or prospective ser- vice providers. Through this guidance, we seek to clarify application of the testimonial rule as it relates to the dissemination of genuine third-party commentary that could be useful to consumers.

Specifically, we seek through this guidance to assist firms in applying section 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and rule 206(4)-1(a)(1) thereunder ("testimonial rule") to their use of social media.[3] The guidance, in the form of questions and answers, also seeks to assist investment advisers in developing compliance policies and procedures reasonably designed to address participation in this evolving technology, specifically with respect to the publication of any public commentary that is a testimonial.

Consistent with previous staff guidance, we believe that in certain circumstances, as described below, an investment adviser's or investment advisory representative's ("IAR's") publication of all of the testimonials about

the investment adviser or IAR from an independent social media site on the investment adviser's or IAR's own social media site or website would not implicate the concern underlying the testimonial rule.[4]

BACKGROUND

Section 206(4) generally prohibits any investment adviser from engaging in any act, practice or course of business that the Commission, by rule, defines as fraudulent, deceptive or manipulative. In particular, rule 206(4)-1(a)(1) states that:

> *[i]t shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business . . . for any investment adviser registered or required to be registered under [the Advisers Act], directly or indirectly, to publish, circulate, or distribute any advertisement which refers, directly or indirectly, to any testi- monial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser.*

Rule 206(4)-1(a)(1) was designed to address the nature of testimonials when used in investment advisory advertisements. When it adopted the rule, the Commission stated that, in the context of investment advisers, it found ". . . such advertisements are mis- leading; by their very nature they emphasize the comments and activities favorable to the investment adviser and ignore those which are unfavorable."[5] The staff has stated that the rule forbids the use of a testimonial by an investment adviser in advertisements "because the testimonial may give rise to a fraudulent or deceptive implication, or mistaken inference, that the experience of the person giving the testimonial is typical of the experience of the adviser's clients."[6]

Whether public commentary on a social media site is a testimonial depends upon all of the facts and circumstances relating to the statement. The term "testimonial" is not defined in the rule, but the staff has consistently interpreted that term to include a "statement of a client's experience with, or endorsement of, an investment adviser."[7] Depending on the facts and circumstances, public commentary made directly by a client about his or her own experience with, or endorsement of, an investment adviser or a statement made by a third party about a client's experience with, or endorsement of, an investment adviser may be a testimonial.[8]

The staff also has stated that an investment adviser's publication of an article by an unbiased third party regarding the adviser's investment performance is not a testi- monial, unless it includes a statement of a client's experience with or endorsement of the adviser.[9] The staff also has stated that an adviser's advertisement that includes a partial client list that does no more than identify certain clients of the adviser cannot be viewed either as a statement of a client's

experience with, or endorsement of, the advis- er and therefore is not a testimonial.[10] Such an advertisement could nonetheless violate section 206(4) and rule 206(4)-1(a)(5) if the advertisement is false or misleading.[11]

The staff no longer takes the position, as it did a number of years ago, that an adver- tisement that contains non-investment related commentary regarding an IAR, such as regarding an IAR's religious affiliation or community service, may be deemed a testi- monial violative of rule 206(4)-1(a)(1).[12]

The following questions and answers are intended to provide more guidance.

Third-party commentary

Q1. *May an investment adviser or IAR publish public commentary that is an explicit or implicit statement of a client's experience with or endorsement of the investment adviser or IAR on the investment adviser's or IAR's social media site?*

A1. Generally, staff believes that such public commentary would be a testimonial within the meaning of rule 206(4)-1(a)(1) and its use in an advertisement by an investment adviser or IAR would therefore be prohibited.

- For example, if an investment adviser or IAR invited clients to post such public commentary directly on the investment adviser's own internet site, blog or social media site that served as an advertisement for the investment adviser or IAR's advisory services, such testimonials would not be permissible.

Q2. *May an investment adviser or IAR publish the same public commentary on its own internet or social media site if it comes from an independent social media site?*

A2. When an investment adviser or IAR has no ability to affect which public commen- tary is included or how the public commentary is presented on an independent social media site; where the commentators' ability to include the public commen- tary is not restricted;[13] and where the independent social media site allows for the viewing of all public commentary and updating of new commentary on a real-time basis, the concerns underlying the testimonial prohibition may not be implicated.

As described in more depth below, publication of public commentary from an inde- pendent social media site would not raise any of the dangers that rule 206(4)-1(a)
(1) was designed to prevent if:

- the independent social media site provides content that is independent

of the investment adviser or IAR;

- there is no material connection between the independent social media site and the investment adviser or IAR that would call into question the independence of the independent social media site or commentary; and

- the investment adviser or IAR publishes all of the unedited comments appearing on the independent social media site regarding the investment adviser or IAR.[14]

Under these circumstances, an investment adviser or IAR may include such public commentary in an advertisement without implicating the concerns underlying the testimonial rule.

If, however, the investment adviser or IAR drafts or submits commentary that is included on the independent social media site, the testimonial rule generally would be implicated. Also, if the investment adviser or IAR is allowed to suppress the publication of all or a portion of the commentary, edit the commentary or is able to organize or prioritize the order in which the commentary is presented, the testimo- nial rule generally would be implicated.

Q3. *What content is not independent of an investment adviser or IAR and what is a material connection that would call into question the independence of a site or commentary?*

A3. Commentary would not be independent of an investment adviser or IAR if the investment adviser or IAR directly or indirectly authored the commentary on the independent social media site, whether in their own name, a third party's name, or an alias, assumed or screen name.

An investment adviser or IAR would have a material connection with a site or com- mentary that would call into question the independence of the site or commentary if, for example, the investment adviser or IAR: (1) compensated a social media user for authoring the commentary, including with any product or service of value; or (2) prioritized, removed or edited the commentary.[15]

- For example, an investment adviser could not have a supervised person submit testimonials about the investment adviser on an independent social media site and use such testimonials in advertisements without implicating the testimonial rule.

- An investment adviser or IAR could not compensate a client or prospective client (including with discounts or offers of free services) to post commentary on an independent social media site and use such testimonials in advertisements without implicating the testimonial rule.

Q4. *May an investment adviser or IAR publish testimonials from an independent social media site in a way that allows social media users to sort the criteria?*

A4. An investment adviser or IAR's publication of testimonials from an independent social media site that directly or indirectly emphasizes commentary favorable to the investment adviser or IAR or de-emphasizes commentary unfavorable to the invest- ment adviser or IAR would implicate the prohibition on testimonials. The investment adviser may publish only the totality of the testimonials from an independent social media site and may not highlight or give prominence to a subset of the testimonials.

- Investment adviser or IAR sites may publish the testimonials from an indepen- dent social media site in a content-neutral manner, such as by chronological or alphabetical order, which presents positive and negative commentary with equal prominence.

- Social media users, however, are free to personally display the commentary and sort by any criteria, including by the lowest or highest rating. Investment adviser and IAR sites may facilitate a user's viewing of the commentary by providing a sorting mechanism as long as the investment adviser or IAR site does not itself sort the commentary.

Q5. *May an investment adviser or IAR publish testimonials from an independent social media site that includes a mathematical average of the public commentary?*

A5. Publication by an investment adviser or IAR of such testimonials from an independent social media site would not raise any of the dangers that rule 206(4)-1(a)
(1) was designed to prevent if the independent social media site were designed to make it equally easy for the public to provide negative or positive commentary about an investment adviser or IAR.

- Investment advisers or IARs could publish testimonials from an independent social media site that include a mathematical average of the commentary provided that commenters themselves rate the investment advisers or IARs based on a ratings system that is not designed to elicit any pre-determined results that could benefit any investment adviser or IAR.

- The independent social media site, the investment adviser and the IAR may not provide a subjective analysis of the commentary.[16]

Inclusion of on Investment Adviser Advertisements on

Independent Social Media Site

Q6. *May an investment adviser or IAR publish public commentary from an independent site if that site also features the investment adviser or IAR's advertising?*

A6. The existence of an investment adviser or IAR's advertisement within the archi- tecture of an independent site that also contains independent public commentary does not, in combination, create a prohibited testimonial or otherwise make the advertisement false or misleading, provided that the investment adviser complies with the material connection and independence factors described above and provided that the advertisement is easily recognizable to the public as a sponsored statement.

- In other words, an advertisement would not cause the investment adviser or IAR's publication of the independent social media site's commentary to violate rule 206(4)-1 where (1) it would be readily apparent to a reader that the investment adviser or IAR's advertisement is separate from the public commentary featured on the independent social media site and (2) the receipt or non-receipt of advertising revenue did not in any way influence which public commentary is included or excluded from the independent social media site.

Reference to Independent Social Media Site Commentary Investment Adviser Non-Social Media Advertisements

Q7. *May an investment adviser or IAR refer to public commentary from an independent social media site on non-social media advertisements* (*e.g.*, newspaper, radio, television)*?*

A7. An investment adviser or IAR could reference the fact that public commentary regarding the investment adviser or IAR may be found on an independent social media site, and may include the logo of the independent social media site on its non-social media advertisements, without implicating the testimonial rule.

- For example, an IAR could state in its newspaper ad "see us on [independent social media site]," to signal to clients and prospective clients that they can research public commentary about the investment adviser or IAR on an independent social media site.

- In contrast, an investment adviser or IAR may not publish any testimonials from the independent social media site on the newspaper ad without implicating the testimonial rule.[17]

Client lists

Q8. Would a list or photographs of "friends" "or "contacts" on an investment adviser or IAR's social media site that is viewable by the general public be considered a testimonial or otherwise violate section 206(4) or rule 206(4)-1?

A8. It is common on social media sites to include a communal listing of contacts or friends. The staff has stated that an advertisement that contains a partial client list that does no more than identify certain clients of the adviser cannot be viewed either as a statement of a client's experience with, or endorsement of, the invest- ment adviser, and therefore is not a testimonial.[18] Such an advertisement, however, could be false or misleading under rule 206(4)-1(a)(5) depending on the facts and circumstances.

- If the contacts or friends are not grouped or listed so as to be identified as current or past clients of an IAR, but are simply listed by the social media site as accepted contacts or friends of the IAR in the ordinary course, such a listing of contacts or friends generally would not be considered to be in violation of rule 206(4)-1(a)(1).

- However, if an IAR attempts to create the inference that the contacts or friends have experienced favorable results from the IAR's investment advisory services, the advertisement could be considered to be in violation of section 206(4) and rule 206(4)-1.

Fan/Community Pages

Q9. Individuals unconnected with a particular investment adviser or IAR may establish "community" or "fan" or other third-party sites where the public may comment on a myriad of investment topics, along with commentary regarding an investment adviser firm or individual IARs. Do such sites raise concerns under rule 206(4)-1?

A9. In the ordinary course, a third party's creation and operation of unconnected community or fan pages generally would not implicate rule 206(4)-1. We strongly caution investment advisers and supervised persons when publishing content from or driving user traffic to such sites (including through hyperlinks to such sites), particularly if the site does not meet the material connection and independence conditions described above. The Commission has stated that:

> *any SEC-registered investment adviser (or investment adviser that is required to be SEC registered) that includes, in its web site or in other electronic com- munications, a hyperlink to postings on third-party web sites, should carefully consider the applicability of the advertising provisions of the [Advisers Act]. Under the Advisers Act, it is a fraudulent act for an investment adviser to, among other things, refer to testimonials in its advertisements.*[19]

Endnotes

1 For purposes of this guidance, "publication" refers to any form of real-time broad- cast through social media or the Internet whether by hyperlinking, posting, live- streaming, tweeting, or forwarding or any similar public dissemination and, does not relate to advertisements on non-Internet or non-social media sites, such as paper, television or radio. Social media allows for instantaneous updating of posted com- mentary and concurrent viewing of *all of* the comment history; in contrast, paper, television and radio are static media that reflect public commentary at a particular point in time and are limited media that would typically not reproduce all of the available public commentary simultaneously (often due to cost, space and other considerations).

2 As used herein, "independent social media sites" refers specifically to third-party social media sites that predominantly host user opinions, beliefs, findings or experi- ences about service providers, including investment advisory representatives or investment advisers (*e.g.*, Angie's List). An investment adviser's or IAR's own social media profile or account that is used for business purposes is not an "independent social media site."

3 This *IM Guidance Update* only addresses the use by a firm or IARs of social media sites for business purposes. This Update does not address the use by individuals of social media sites for purely personal reasons. This Update does not seek to address any obligations under state law of social media for business use. In addition, this guidance does not seek to address the use of social media sites by broker-dealers.

4 Any such advertisements also must comply with rule 206(4)-1(a)(5).

5 Investment Advisers Act Rel. No. 121 (Nov. 2, 1961) (adopting rule 206(4)-1).

6 *See* Richard Silverman, Staff No-Action Letter (pub. avail. March 27, 1985).

7 *See* Cambiar Investors, Inc., Staff No-Action Letter (pub. avail. Aug. 28, 1997) ("Cambiar").

8 *See* DALBAR, Inc., Staff No-Action letter (pub. avail. March 24, 1998) ("DALBAR").

9 *See* New York Investors Group, Inc., Staff No-Action Letter (pub. avail. Sept. 7, 1982); Stalker Advisory Services, Staff No-Action Letter (pub. avail. Feb. 14, 1994). *See also* Kurtz Capital Management, Staff No-Action Letter (pub. avail. Jan. 22, 1988).

10 *See* Cambiar, supra note 7.

11 *Id. ("*For example, the inclusion of a partial client list in an adviser's advertisement has the potential to mislead investors if the clients on the list are selected on the basis of performance and this selection bias is not adequately disclosed. A list that includes only advisory clients who have experienced above-average performance could lead an investor who contacts the clients for references to infer something about the adviser's competence or about the possibility of enjoying a similar invest- ment

experience that the investor might not have inferred if criteria unrelated to the client's performance had been used to select the clients on the list or if the selec- tion bias was fully and fairly disclosed.").

12 *See* Dan Gallagher, Staff No-Action Letter (pub. avail. July 10, 1995). Advisers that publish advertisements regarding non-investment related commentary remain subject to the fiduciary responsibilities imposed by section 206(1) and (2) of the Advisers Act. Thus an adviser cannot use social media to perpetrate affinity frauds, which are investment scams that prey upon members of identifiable groups, such as religious or ethnic communities, the elderly, or professional groups. Affinity frauds can target any group of people who take pride in their shared characteristics, whether they are religious, ethnic, or professional. *See* http://www.sec.gov/investor/pubs/affinity.htm.

13 Some independent social media sites may have member fees or subscriptions pay- able by users. An investment adviser or IAR's publication of public commentary from a site that charges member or subscription fees to public users would not call into question the independence of the independent social media site for purposes of our views herein.

14 Independent social media sites may have editorial policies that edit or remove public commentary violative of the site's own published content guidelines (*e.g.*, prohibiting defamatory statements; threatening language; materials that infringe on intellectual property rights; materials that contain viruses, spam or other harmful components; racially offensive statements or profanity). An investment adviser or IAR's publication of public commentary that has been edited according to such an editorial policy would not call into question the independence of the independent social media site for purposes of the staff's views herein.

15 As explained in Q6 below, any arrangement whereby the investment adviser or IAR compensated the independent social media site, including with advertising or other revenue, in order to publish or suppress the publication of anything less than the totality of the public commentary submitted could render any use by the IAR or investment adviser on its social media site violative of the prohibition on testimonials.

16 *See* DALBAR, supra note 8.

17 *See* supra note 1.

18 *See Cambiar, supra* note *7*.

19 *See* Commission Guidance on the Use of Company Websites at note 83, Investment Company Act Rel. No. 28351 (Aug. 1, 2008). *See also SEC Interpretation: Use of Electronic Media*, Investment Company Act Rel. No. 24426 (May 4, 2000).

This *IM Guidance Update* summarizes the views of the Division of Investment Management regarding various requirements of the federal securities laws. Future changes in laws or regulations may supersede some of the discussion or issues raised herein. This *IM Guidance Update* is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved of this *IM Guidance Update*.

The Investment Management Division works to:

- protect investors
- promote informed investment decisions and
- facilitate appropriate innovation in investment products and services

through regulating the asset management industry.

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