

Filing Requirements for Certain Electronic Communications

The staff has received inquiries regarding whether certain interactive content posted in a real-time electronic forum (*i.e.*, chat rooms or other social media) (“interactive content”) should be filed under the filing requirements of Section 24(b) of the Investment Company Act of 1940 (“1940 Act”) or Rule 497 under the Securities Act of 1933 (“1933 Act”) if it is not required to be filed under Financial Industry Regulatory Authority (“FINRA”) Rule 2210.¹ The staff believes that certain interactive content need not be filed. Whether a communication need be filed depends on the content, context, and presentation of the particular communication or set of communications and requires an examination of the underlying substantive information transmitted to the social media user and consideration of any other facts and circumstances, such as whether the interactive communication is merely a response to a request or inquiry from the social media user or is forwarding previously-filed content. The following examples of interactive communications are intended to provide more guidance.

The staff would view the following as examples of interactive communications that generally need not be filed:

- ▲ An incidental mention of a specific investment company or family of funds not related to a discussion of the investment merits of the fund.
 - “Fund X Family of Funds invites you to their annual benefit for XYZ Charity.”
 - “More than 100 Fund X employees volunteered for our Annual Day of Caring!”
 - “Consumer Reports has written an article in which it mentions our Brand X Rewards Card. Are you a card member?”

- ▲ The incidental use of the word “performance” in connection with a discussion of an investment company or family of funds, without specific mention of some or all of the elements of a fund’s return (*e.g.*, 1, 5 and 10 year performance).²
 - “We update the performance of our funds every month and publish the results on <website url>.”
 - “Click on this link <website url> where we provide full details of our yearly performance since inception.”



