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Subject:

Date: Wed, 29 Jul 2015 23:30:13 +0000

I have attached excerpts from West Publishing's *Regulation of Investment Advisers*. The idea that as long as you are not providing advice about "the purchase or sale of individual securities" you should be ok, is I believe too narrow a scope. See Sections 1:7, 1:8, and 1:9 of the attached excerpts. For example, in Section 1:8 it states that:

". . . For example, a person may be deemed to be giving advice about securities even if the advice does not relate to specific securities, but rather relates to the benefits of investing in securities as compared with non-securities such as real estate or insurance. In addition, the SEC staff has taken the position that to be considered advice about securities, the advice need not be in the form of buy or sell recommendations for particular securities, but can be analyses or valuations of particular securities or of the securities markets generally. Likewise, a person who provides asset allocation or timing advice (i.e., advice about when a client should have a higher or lower percentage of his assets in certain securities or types of securities, such as equity mutual funds or money market funds) is viewed as giving advice about securities. Similarly, a person who advises clients as to the selection of an investment adviser, or who evaluates the performance of investment advisers for clients, may be considered to be indirectly giving advice about securities. . . ."

See also the page from the SEC website entitled General Information on the Regulation of Investment Advisers, <https://www.sec.gov/divisions/investment/iaregulation/memoia.htm>, which includes the following statement:

"Finally, a person or firm satisfies the "advice about securities" element if the advice or reports relate to securities. The Division has stated that providing one or more of the following also could satisfy this element: advice about market trends; advice in the form of statistical or historical data (unless the data is no more than an objective report of facts on a non-selective basis); advice about the selection of an investment adviser; advice concerning the advantages of investing in securities instead of other types of investments; and a list of securities from which a client can choose, even if the adviser does not make specific recommendations from the list. An employee of an SEC-registered investment adviser does not need to register separately, so long as all of the employee's investment advisory activities are within the scope of his employment."

I have also attached SEC release 1092 in which the SEC staff provides additional guidance on the definition of "investment adviser." See page 6 of the Release which states:

". . . The staff believes that a person who provides advice, or issues or promulgates reports or analyses, which concern securities, but which do not relate to specific securities, generally is an investment adviser under Section 202(a)(11), assuming the services are performed as part of a business and for compensation."

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