ARIZONA STATE UNIVERSITY

CORPORATE AND BUSINESS LAW JOURNAL FORUM

VOLUME 3 | NOVEMBER 2021 | NUMBER 11

COMMENTARY

Why More Consumers Need to Heed SEC Warnings Against Taking Stock Advice from Social Media.

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The rise of social media has complicated efforts to ensure that accurate information is disseminated about a company's financial health and investment advice more generally. With increasing frequency, many people now receive their news from social media because of the ease of access to these sources. There has also been an increase in influencers who are often professionals of various careers who receive a lot of engagement on their content on Twitter, Instagram, Facebook, etc.[1] Influencers frequently provided tips and advice that influence individuals' behavior including endorsing products and disseminating information on fashion trends. Given the rise of influencers, there has been an increase of individuals who provide investment stock information on social media. This poses a variety of issues for investors. For the last few years, the Securities Exchange Commission ("SEC") has targeted these social media actions from two sides. The SEC provides information on potential scams and red flags to investors and the SEC has taken action against those who have violated antitrust laws.

For four years now, the SEC has discouraged relying on information from social media when making investment decisions. In particular, the SEC Office for Education and Advocacy of Enforcement has spearheaded this initiative. This office has put out a variety of tips and red flag warnings to consider as it has consistently cautioned against trusting investment information from social media.[2] In a recent investor alert, the Office warned that there have been fake profiles created on social media impersonating investment professionals which provide

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[1] Kelsi Listen, The Significance of a Viral Post on Social Media at 2 (April 2021) (unpublished manuscript) (Bridgewater College Library).

[2] Investor Alert, SEC *Fraudulent Stock Promotions* (March 29, 2016), https://www.sec.gov/oiea/investor-alerts-bulletins/ia_promotions.html.

misleading investment advice.[3] Additionally, the SEC has warned against investing in companies because a celebrity has "sponsored, invest in it or says it is a good investments."[4] Simply relying on celebrities is not a good indication that a stock is a good investment, even if a celebrity themselves invest in the stock – wealthier individuals are able to sustain a risk or loss in ways the average consumer cannot.[5]

The SEC Division of Enforcement has also brought several actions against individuals for violating antitrust laws, to combat this growing issue as well. These recent actions indicate the magnitude of the harm illegal social media schemes are having on the stock exchanges. Recently, the SEC brought an action against Steven Gallagher.[6] Gallagher had posted thousands of tweets on his Twitter account encouraging his followers to purchase certain stocks. These were stocks that Gallagher held personally. Once these stocks were at an inflated price, Gallagher would sell his stock and without informing his followers.[7] In sum, Gallagher was using Twitter to encourage followers to purchase stock he owned to inflate its price and then sell out to turn a profit. Gallagher allegedly made over a 1-million-dollar profit in this pump and dump scheme.[8] The SEC secured a temporary injunction and asset freeze against Gallagher and the case remains ongoing.[9] SEC officials warned again that this case is exactly why "investors should be wary of taking financial advice from unverified sources on Twitter and other social media platforms."[10]

The SEC remains steadfast in discouraging investors from taking investment advice from social media as recent enforcement action illustrates how problematic this practice is. However, the issue remains that social media is a medium in which individuals spend on average 144 minutes a day on and it influences human behavior.[11] Furthermore, social media gives "investment advice" for free whereas genuine financial advisors often charge fees and commissions. It remains to be seen what additional precautionary efforts the SEC will consider in trying to discourage individuals from using advice they find on social media.

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[3] Investor Alert, SEC, *Fraudsters Posing as Brokers or Investment Advisers* – Investor Alert (July 27, 2021), https://www.sec.gov/oiea/investor-alerts-and-bulletins/fraudsters-posing-brokers-or-investment-advisers-investor-alert.
[4] Investor Alert, SEC, *Fraudsters Posing as Brokers or Investment Advisers* (March 10, 2021), https://www.sec.gov/oiea/investor-alerts-and-bulletins/celebrity-involvement-spacs-investor-alert.
[5] *Id*.
[6] Press Release, SEC, *SEC Obtains Asset Freeze and Other Relief in Halting Penny Stock Scheme on Twitter* (Oct. 26, 2021), https://www.sec.gov/news/press-release/2021-214.
[7] *Id*.
[8] Matt Robinson & Christian Berthelsen, *Twitter User 'Alexander Delarge' Charged for Hyping Penny Stocks,* BLOOMBERG WEALTH (Oct. 26, 2021, 10:08 AM*),* https://www.bloomberg.com/news/articles/2021-10-26/twitter-user-alexander-delarge-charged-for-hyping-penny-stocks.
[9] SEC, supra note 6.
[10] *Id*.
[11] Gary Henderson, *How Much Time Does the Average Person Spend on Social Media?,* DIGITAL MARKETING (Aug. 24, 2020, 3:15 PM*),* https://www.digitalmarketing.org/blog/how-much-time-does-the-average-person-spend-on-social-media.