

REPORT ON MASSACHUSETTS REGISTERED INVESTMENT ADVISERS' USE OF SOCIAL MEDIA

Executive Summary

The use of social media by the American public and investment professionals is on the rise. There is a growing trend in today's brokerage industry to use these sites for outreach to existing as well as potential customers. The use of social media for business purposes is also increasing within the investment advisory field. Given this trend, the Securities Division of The Office of the Secretary of the Commonwealth (the "Division") has surveyed investment advisers registered and doing business within the Commonwealth. The purpose of the survey is to determine the scope of investment advisers' use of social media, and what, if any, record retention and supervisory procedures have been implemented or utilized by those advisers. The Division forwarded the social media survey (the "Survey") to 576 investment advisers registered with the Division and located in the Commonwealth. As of today's date 79% of advisers have responded.

The Division, through the Survey, examined whether the advisers used or intended to use social media networks, the types of social media used, and what compliance procedures had been established to secure maintenance of records and to assure supervision and compliance obligations. The responses indicated that 44% of investment advisers used some form of social media and that this usage rate will likely increase within the next year. Investment advisers use Facebook, LinkedIn and Twitter, host their own websites, blog sites, and utilize other social media services. The Survey also suggests that some advisers do not have policies relating to the retention or supervision of social media content, are not retaining social media content, and do not supervise the use of social media content. Based on this analysis, the Division believes that additional regulatory guidance concerning the use of social media would be appropriate to assist Massachusetts-registered investment advisers in maintaining a compliant advisory practice.

Background

The use of social networking activity has dramatically increased in recent years. According to a recent report by the Pew Internet and American Life Project, 61% of American adults have used a social networking site such as MySpace, Facebook, or LinkedIn.com as of November 1, 2010. 46% of American adults had logged into such a site in April 2009, and 8% had logged in 2005.¹ Similarly, the use of Twitter and other internet-based social networking has also increased based on recent surveys.²

Similarly, there is a growing trend in today's securities industry to use these sites in their outreach to existing as well as potential customers.³ The Financial Industry Regulatory Authority ("FINRA") has articulated guidance for member firms as to the use of social media in

¹ See Pew Internet and American Life Project November 2011 study (and associated trend data) available at <http://pewinternet.org/Shared-Content/Data-Sets/2010/November-2010--Post-Election.aspx>.

² See Pew Internet and American Life Project May 2011 Study available at <http://www.pewinternet.org/Reports/2011/Twitter-Update-2011/Main-Report.aspx>.

³ See, e.g., Sharon Gaudin, Business Use of Facebook, Twitter Exploding, Computerworld (Nov. 9, 2009), available at www.computerworld.com/s/article/9140579/Business_use_of_Twitter_Facebook_exploding.

their practices.⁴ Certain broker-dealers have publicly announced that they are now permitting their representatives to use social media websites for the first time.⁵

The Survey

The Office of the Secretary of the Commonwealth, through the Division, enforces the Massachusetts Uniform Securities Act. As part of its responsibilities, the Division generally registers all investment advisers with assets under management of up to \$25 million.⁶ In most cases, the Division is the sole regulator for these investment advisers. Given the widespread and growing use of social media by American adults and the securities industry in particular, the Division recently surveyed all 576 Massachusetts-registered investment advisers located in the Commonwealth to determine the scope of their social media usage and what compliance procedures were in place related to the use of social media.

The Survey required responses to a variety of questions as to each investment adviser's use of social media (including Facebook, LinkedIn, Twitter, as well as other media), the compliance policies or procedures in place with regard to such media (including record retention, content review, and supervision), and actual practices (including whether the firm uses an outside vendor for retention of such electronic content). The Report has a 79% response rate. The following are the key findings of the report.

Key Findings

The Survey indicated that 44% of state registered investment advisers in Massachusetts currently utilize at least one form of social media in connection with their advisory business.⁷ Moreover, consistent with the general public and the securities industry as a whole, the usage rate is likely to increase. Of the investment advisers not currently using social media, 10% intend to use it within the next 12 months.⁸ While a majority of investment advisers using social media fall within the 42-62 age bracket, the use of social media covers a broad age spectrum - the youngest being 23 and the oldest being 78.⁹ Most investment advisers using social media websites hosted by other parties used LinkedIn (41%), followed by Facebook (14%), and Twitter (8%).¹⁰

These results, while not surprising, are indicative of the rapid growth of social media sites in business communications. However, from an investor protection standpoint, the Survey suggests that investment advisers using social media sites for business communications may not have implemented sufficient recordkeeping systems and/or supervisory and compliance procedures to

⁴ See FINRA Regulatory Notice 10-06 available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120779.pdf>.

⁵ See "Morgan Stanley Smith Barney Advisers To Use LinkedIn" (May 25, 2011) available at <http://online.wsj.com/article/BT-CO-20110525-710966.html>.

⁶ Under the Wall Street Reform and Consumer Protection Act of 2010, investment advisers with up to \$100 million in assets under management will be required to register with the Division as of March 30, 2012.

⁷ See Chart 1 (Investment Advisers Using Social Media).

⁸ See Chart 2 (Investment Advisers Planning to Use Social Media).

⁹ See Chart 3 (Age Brackets of Investment Advisers Using at Least One Form of Social Media).

¹⁰ See Chart 5 (Breakdown of Type of Social Media Used).

monitor the use of the web sites, blogs and other media outlets. According to survey results, 69% of advisers using social media claimed to not have written record retention policies related to the retention of social media content, and 57% also did not retain all content posted on social media websites maintained (directly or indirectly), by the firm.¹¹ The percentage of investment advisers with procedures for supervising representative's use of social media websites is also low.¹²

Conclusion

Based on this analysis, the Division believes that additional regulatory guidance concerning the use of social media would be appropriate to assist Massachusetts-registered investment advisers in maintaining a compliant practice. To that end, the Division will create a Working Group to determine how registrants can use social media networks to promote their business while remaining compliant with regulatory requirements, in furtherance of investor protection. The Working Group will consist of internal staff and will seek industry input with an ultimate goal of providing guidance and best practices for state-registered investment advisers utilizing social media for business purposes.

¹¹ See Chart 6 (Written Record Retention Policies) and Chart 7 (Record Retention).

¹² See Charts 8 (Written Policies on Employee Use), 9 (Review of Social Media Content Produced by Employees), and 10 (Monitoring of Third-Party Content).

Chart 1: Investment Advisers Using Social Media

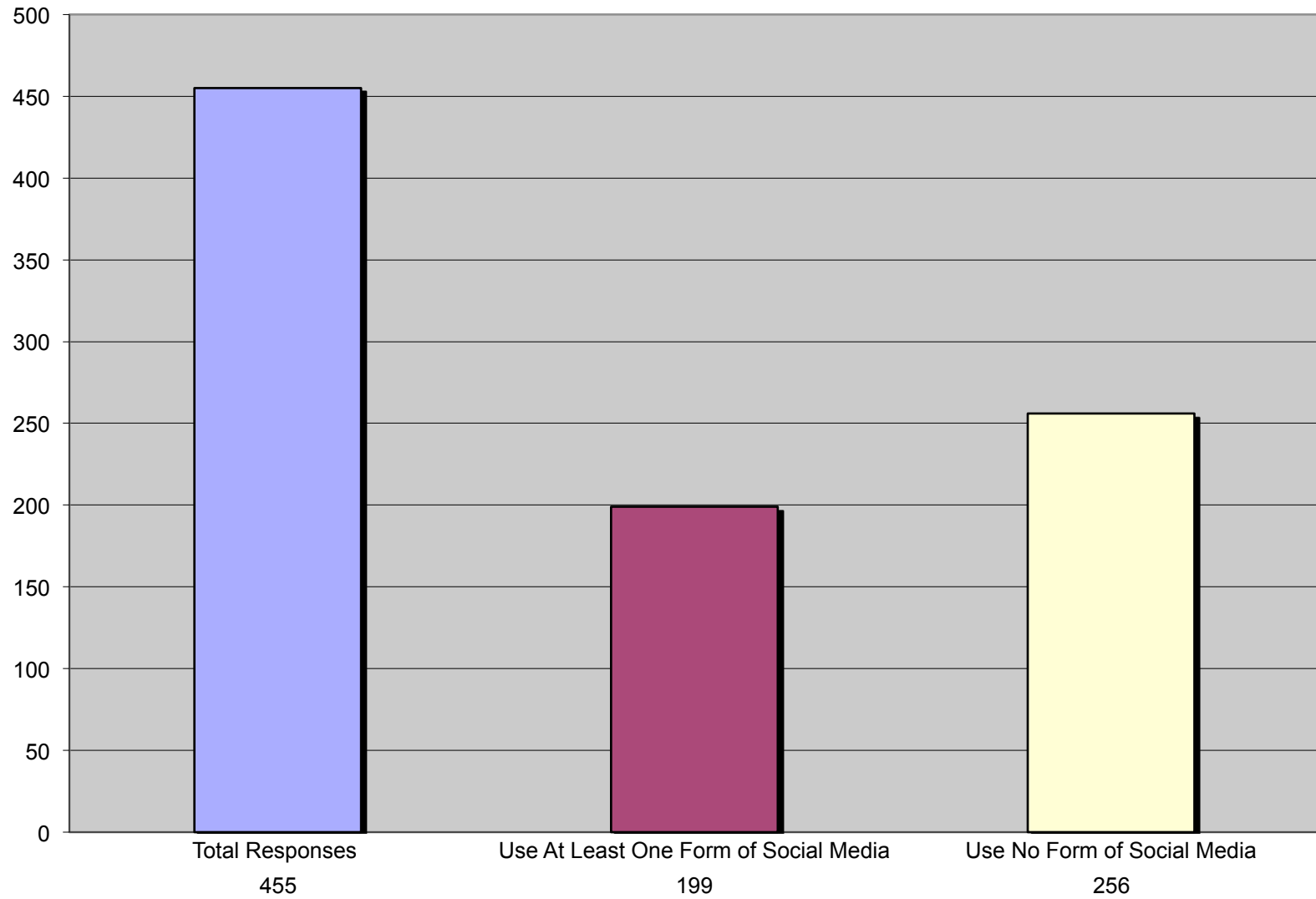


Chart 2: Investment Advisers Planning to Use Social Media

(For the first time, within the next 12 months)

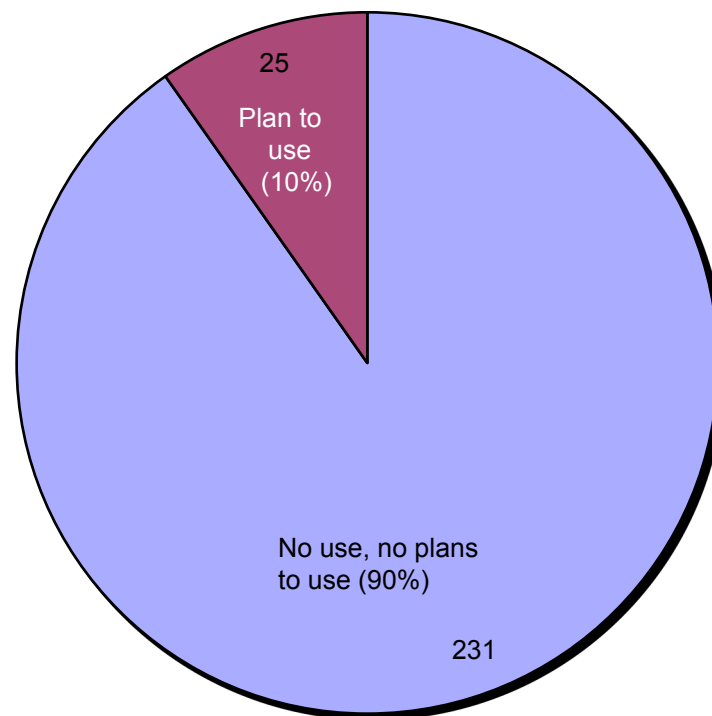


Chart 3: Age Brackets of Investment Advisers Using at Least One Form of Social Media

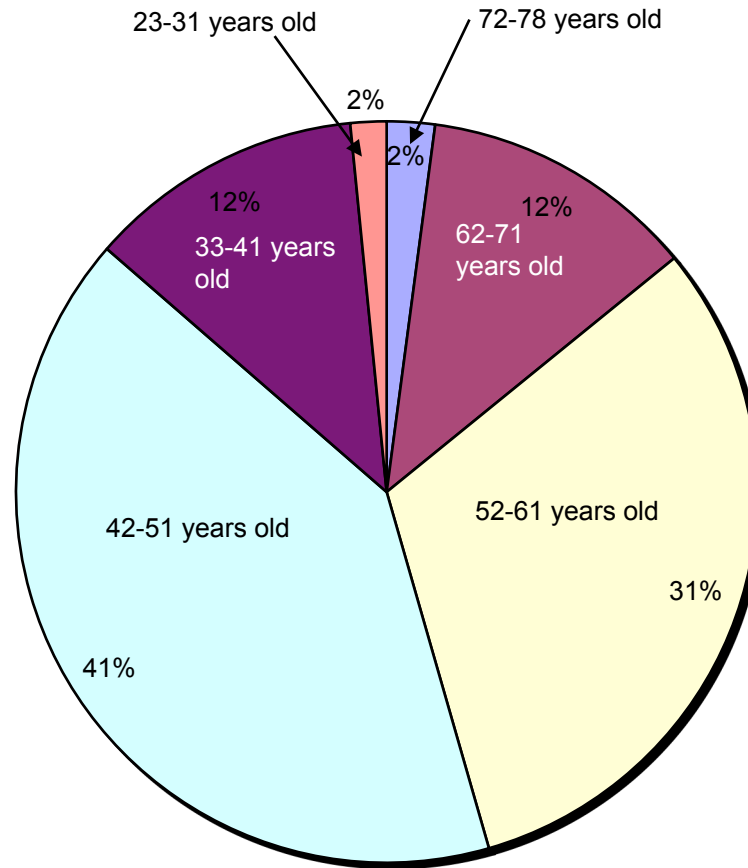


Chart 4: Age Brackets of All Investment Advisers

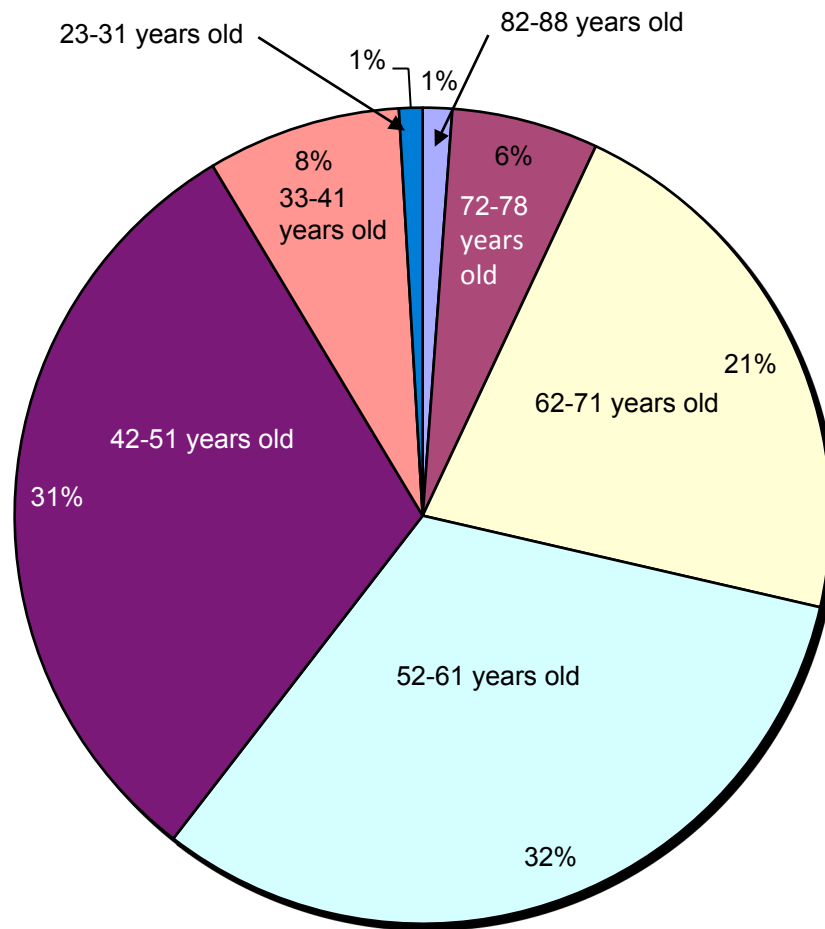


Chart 5: Breakdown of Type of Social Media Used

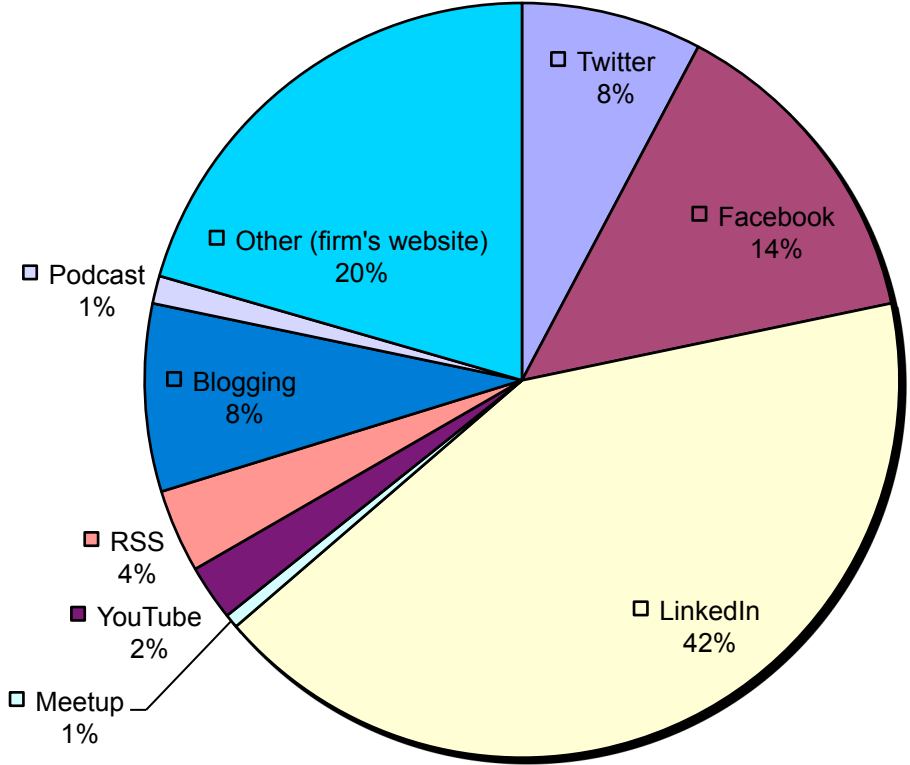


Chart 6: Written Record Retention Policies

Does the firm have written record retention policies related to retention of social media content ?

(Firms Using Social Media Only)

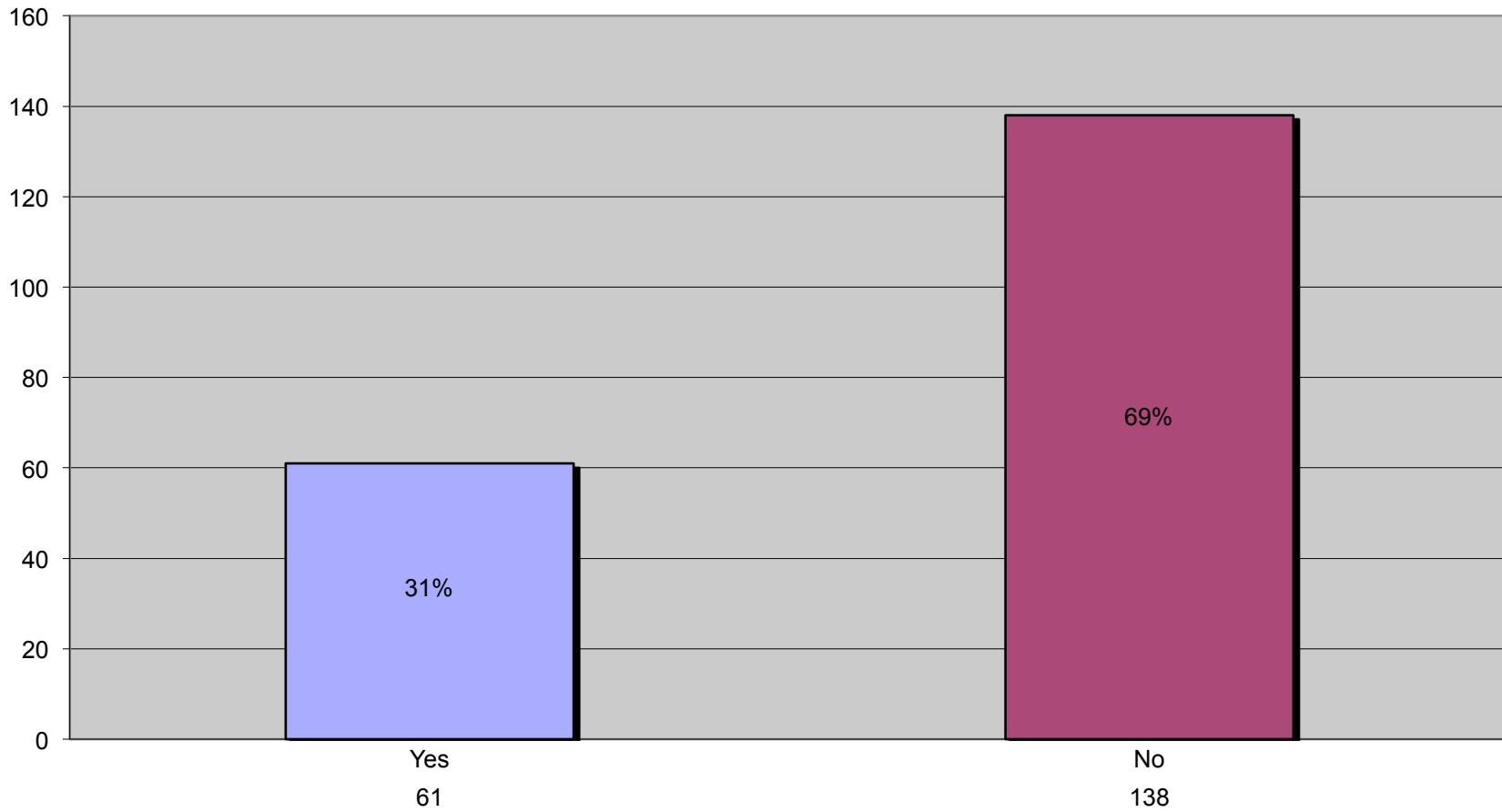


Chart 7: Record Retention

Does the firm currently retain all content posted on social media websites maintained or operated, directly or indirectly, by the firm?

(Firms Using Social Media Only)

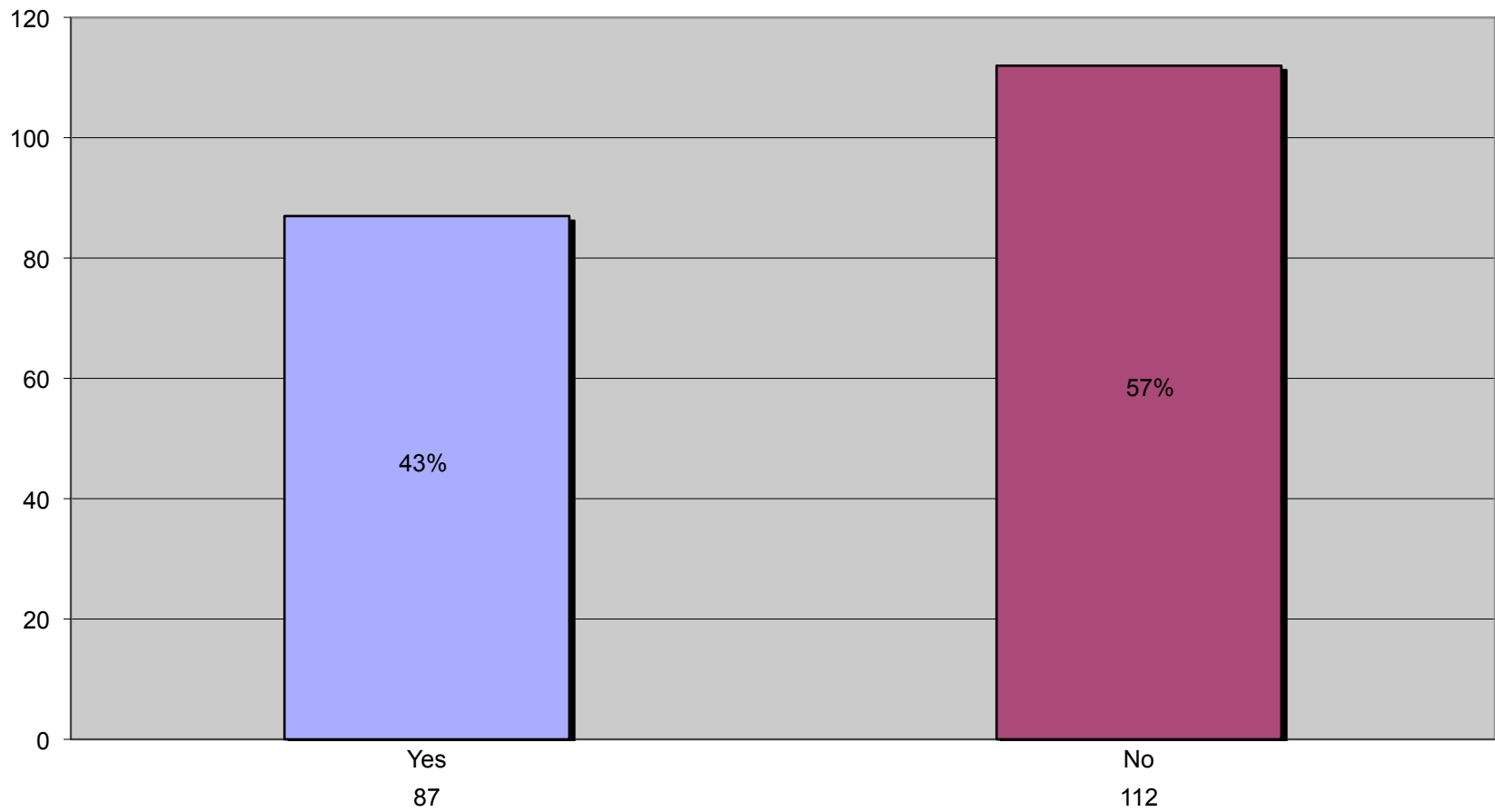


Chart 8: Written Policies on Employee Use

Does the firm currently have written policies and procedures governing an employee's use of social media?

(Firms Using Social Media Only)

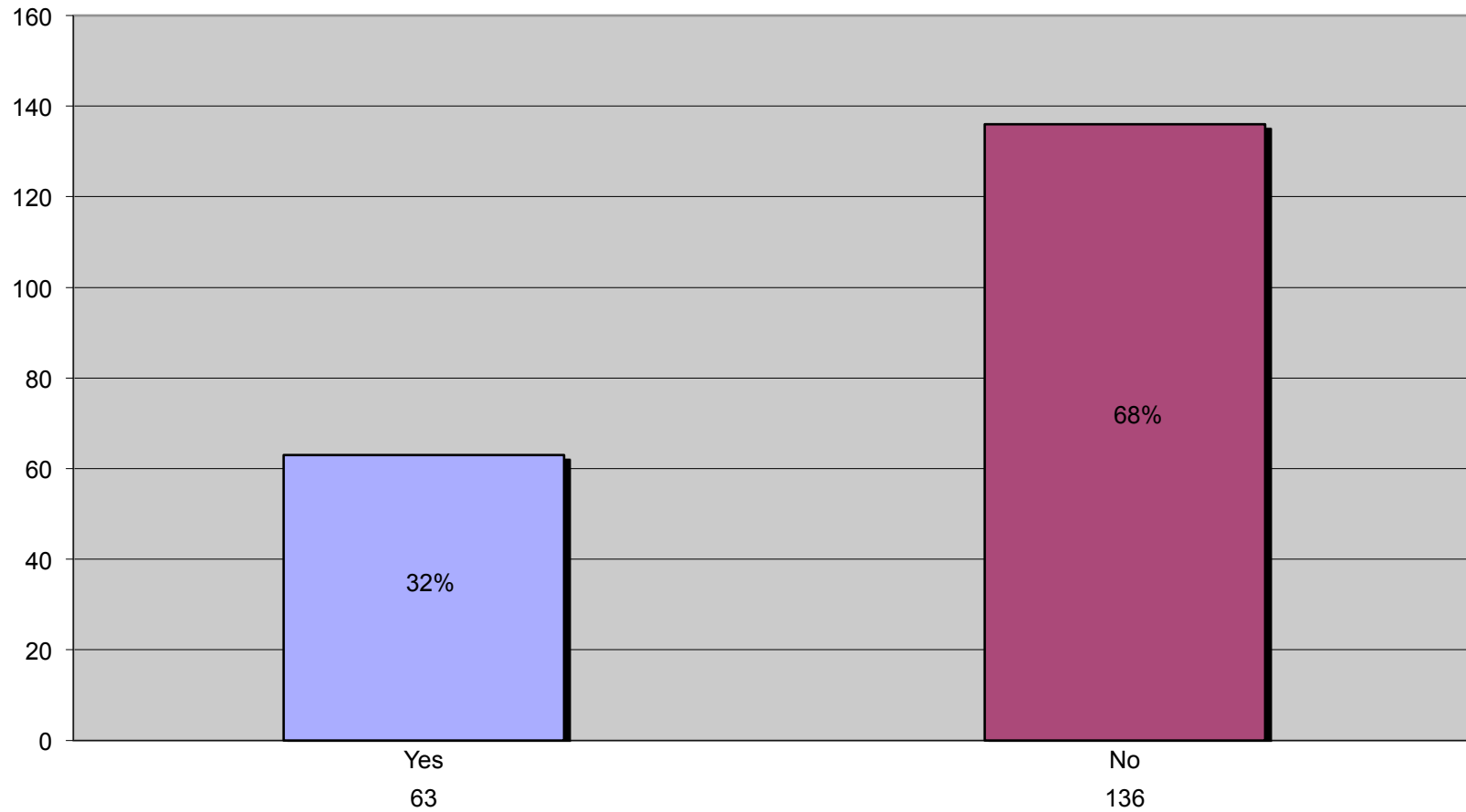


Chart 9: Review of Social Media Content Produced by Employees

Does the firm currently monitor or review social media content produced by its employees for business-related purposes?

(Firms Using Social Media Only)

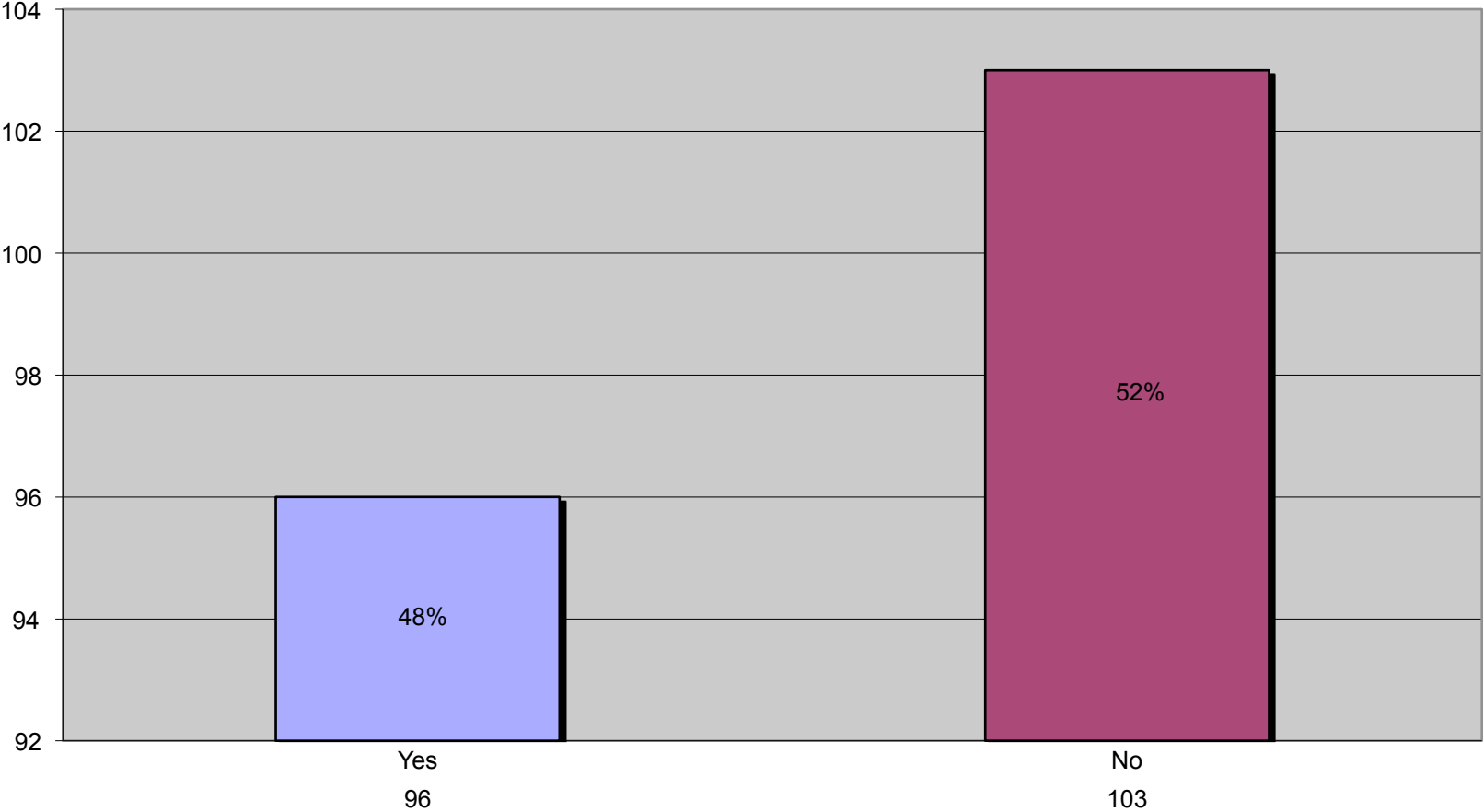


Chart 10: Monitoring of Third-Party Content

Does the firm currently monitor or review content posted by third parties (such as by clients or prospective clients) on social media websites maintained by the firm?

(Firms Using Social Media Only)

