

SEC Issues New Risk Alert on the Marketing Rule

by David Tang and Michael Schmieder

On December 16, 2025, the staff (“Staff”) of SEC’s Division of Examinations issued a Risk Alert to address its observations regarding investment advisers’ (“advisers”) compliance with the testimonials and endorsement provisions¹ and the third-party ratings provisions² of amended Rule 206(4)-1 (the “Marketing Rule”) under the Investment Advisers Act of 1940 (the “Advisers Act”).³ This eUpdate provides an overview of the Risk Alert and our observations on compliance with the Marketing Rule in light of the Risk Alert.

Testimonials and Endorsements Provisions

The Marketing Rule prohibits the use of testimonials and endorsements in advertisements unless the adviser satisfies certain disclosure and oversight requirements.⁴ In its examinations, the Staff observed the following deficiencies regarding advisers’ compliance with the testimonials and endorsements provisions of the Marketing Rule.

- Disclosure Requirements – The most common deficiency observed by the Staff with respect to testimonials and endorsements was the failure to provide required disclosures at the time the testimonial or endorsement was disseminated. For example, the Staff observed:
 - Advertisements containing testimonials or endorsements that omitted clear and prominent disclosures as to whether the person providing a testimonial or endorsement (the “promoter”): (i) was a current or former client or investor in a private fund advised by the adviser; (ii) was paid cash or non-cash compensation; and/or (iii) had a material conflict of interest;
 - Disclosures that were not made in a clear and prominent manner, including hyperlinked disclosures rather than disclosures within the testimonial or endorsement, and disclosures in a smaller or lighter font than the testimonial or endorsement;
 - Disclosures that failed to state the material terms of compensation arrangements with the promoter, including material information on the direct and indirect compensation paid to the promoter rather than generic disclosures;⁵ and
 - Disclosures that failed to identify material conflicts of interest arising from the

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adviser's relationship with the promoter and/or compensation arrangements with the promoter. For example, advisers failed to disclose that the promoter was an investor in the promoted adviser or had a sub-advisory relationship with the promoted adviser.

- Oversight Requirements
 - Advisers were unable to demonstrate that they had a reasonable basis for believing that testimonials or endorsements used in advertisements complied with the Marketing Rule.
 - Advisers failed to enter into or maintain written agreements with promoters that described the scope of the agreed-upon activities and the terms of compensation for those activities. In some cases, advisers mistakenly claimed that arrangements with promoters met the *de minimis* compensation exemption from the requirement to have a written agreement (i.e., \$1,000 or less in compensation was paid to the promoter during the preceding 12-month period).
- Ineligible Persons – Advisers did not comply with the Marketing Rule's prohibition on compensating ineligible persons⁶ for testimonials and endorsements despite circumstances indicating that they reasonably should have known of the ineligibility, such as the promoters' disciplinary histories.
- Promoter Affiliated with the Adviser – The Staff observed advisers using promoters affiliated with the advisers that failed to satisfy the disclosure and written agreement requirements of the testimonials and endorsement provisions, and did not qualify for an exemption from the requirements (e.g., the affiliation between the advisers and such promoters was not readily apparent or disclosed at the time the testimonial or endorsement was disseminated).⁷

Third-Party Ratings Provisions

The Marketing Rule's third-party ratings provisions prohibit the inclusion of third-party ratings⁸ in advertisements unless the adviser has a reasonable basis for believing that any underlying questionnaire or survey used in the preparation of the rating meets specified criteria and discloses certain information about the ratings.⁹

The Staff observed advisers that failed to perform sufficient due diligence to form a reasonable basis for believing that any questionnaire or survey used in preparation of third-party ratings was structured to make it equally easy for a participant to provide favorable and unfavorable responses and was not designed to produce predetermined results. By contrast, the Staff observed compliant advisers that reviewed publicly available information about third-party questionnaire or survey methodologies, obtained and reviewed the questionnaires or surveys used, and sought representations from rating providers concerning how the questionnaires or surveys were designed and administered in order to form such reasonable belief.

The Staff observed advisers that failed to provide clear and prominent disclosures of certain information on third-party ratings used in advertisements. For example, the Staff observed:

- Advertisements that included links to third-party websites that contained third-party ratings, but neither the adviser nor the third-party website included required

disclosures;

- Third-party ratings that did not clearly and prominently disclose the date on which the ratings were given or the period on which the ratings were based;
- Advisers that placed third-party rating logos in their advertisements but failed to clearly and prominently identify the third party that created and tabulated the ratings; and
- Advisers that did not disclose direct or indirect compensation provided by the adviser in connection with obtaining or using the third-party rating, including, for example, failing to disclose payments for the use of rating providers' logos or reprints of the ratings, payments for the advisers' priority placement or enhanced exposure in the rating providers' advertisements, or payments to ratings providers for client referrals to the adviser.

Dorsey Observations

As evidenced by the Risk Alert, the only risk alert issued by the Staff in 2025, the Marketing Rule remains a high priority for the SEC. Advisers are on notice as to the Staff's expectations regarding compliance with the testimonials and endorsement provisions and third-party ratings provisions of the Marketing Rule. Advisers would be well-advised to review and confirm that their written policies and procedures with respect to testimonials and endorsements and third-party ratings are reasonably designed and effectively implemented. As a best practice, advisers should conduct periodic reviews of their use of testimonials and endorsements and third-party ratings in advertisements in light of the Marketing Rule's requirements and the Staff's examination observations.

¹ See Advisers Act Rule 206(4)-1(b).

² See Advisers Act Rule 206(4)-1(c).

³ SEC Division of Examinations Risk Alert: Additional Observations Regarding Advisers' Compliance with the Advisers Act Marketing Rule, *available at* <https://www.sec.gov/files/exams-riskalert-mrkt-rule-2512-508.pdf>.

⁴ The Staff also observed advisers that failed to update or implement their written policies and procedures to address the practice of utilizing testimonials and endorsements in advertisements.

⁵ The Risk Alert cited the SEC's Marketing Rule Adopting Release, Advisers Act Rel. No. 5653 (Dec. 22, 2020), p. 96, which provides that: "If a specific amount of cash compensation is paid, the advertisement should disclose that amount. If the compensation takes the form of a percentage of the total advisory fee over a period of time, then the advertisement should disclose such percentage and time period. With respect to non-cash compensation, if the value of the non-cash compensation is readily ascertainable, the disclosures should include that amount."

⁶ See Advisers Act Rule 206(4)-1(e)(9) for the definition of ineligible persons.

⁷ See Advisers Act Rule 206(4)-1(b)(4)(ii), which partially exempts a testimonial or endorsement by specified advisory personnel as long as the affiliation between the adviser and such persons is readily apparent to or is disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the adviser documents such persons' status at the time the testimonial or endorsement is disseminated.

⁸ See Advisers Act Rule 206(4)-1(e)(18), which defines a third-party rating as a rating or ranking of an adviser provided by a person who is not a related person of the adviser,

and such person provides such ratings or rankings in the ordinary course of its business.

⁹ See Advisers Act Rule 206(4)-1(c)(2), which provides that an advertisement may not include any third-party rating, unless the adviser clearly and prominently discloses, or the adviser reasonably believes that the third-party rating clearly and prominently discloses: (i) the date on which the rating was given and the period of time upon which the rating was based; (ii) the identity of the third party that created and tabulated the rating; and (iii) if applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.