

Marketing Rule Compliance Addressed in Recent SEC Risk Alert

MAY 8, 2024

On April 17, 2024, the Division of Examinations (the Division) of the Securities and Exchange Commission (the SEC) released a Risk Alert, “Initial Observations Regarding Advisers Act Marketing Rule Compliance” (the Alert), which provides observations related to investment advisers’ compliance with amended Investment Advisers Act of 1940 (the Advisers Act) Rule 206(4)-1 (the Marketing Rule). Specifically, the Alert discusses compliance with (1) Rule 206(4)-7 under the Advisers Act (the Compliance Rule); (2) Rule 204-2 under the Advisers Act (the Books and Records Rule); and (3) the Marketing Rule’s general prohibitions (the General Prohibitions).

The Division generally observed policies and procedures that were not “reasonably designed or implemented to address compliance with the Marketing Rule, which resulted in gaps for preventing violations of the Marketing Rule, Books and Records Rule, or both.” For example, the Division observed policies and procedures that:

- Only consisted of general description and expectations related to the Marketing Rule.
- Were informal instead of in writing.
- Did not address applicable marketing channels utilized by the investment adviser, such as websites and social media.
- Were not tailored to address specific advertisements employed by the investment adviser (i.e., policies and procedures to address the General Prohibitions and advertising requirements for testimonials, endorsements, and third-party ratings utilized by investment advisers in advertisements).
- Did not address the preservation and maintenance of advertisements and related documents, such as copies of any questionnaires or surveys utilized in the preparation of a third-party rating included in any advertisement.

The Division also noted inaccuracies reported on Form ADV, Part 1A, specifically, cases where investment advisers included performance results, hypothetical performance, or third-party rankings in their marketing materials but inaccurately reported in their Form ADV that their advertisements did not contain these elements.

Finally, the Division observed deficiencies related to the General Prohibitions, including investment advisers engaging in the following activities:

- Making untrue statements of material fact and/or unsubstantiated statements of material fact.

- Omitting material facts or making misleading inferences.
- Making statements that did not present a fair and balanced treatment of material risks or limitations.
- References to specific investment advice that were not presented in a fair and balanced manner.
- Including or excluding performance results or time periods in a manner that was not fair and balanced.
- Advertisements that were otherwise materially misleading.

For each of the activities listed above, the Division presented multiple detailed examples of each deficiency.

The Alert prompts investment advisers to reflect upon their own practices, policies, and procedures and to implement any appropriate modifications to their training, supervisory, and oversight programs to ensure compliance with the Marketing Rule. For more information on specific observations noted by the Division, please review the Alert, available [here](#).

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