SEC Enforcement Case Summary
Nine Advisers Charged in Ongoing Marketing Rule Sweep

On September 9, 2024, the SEC brought charges against nine registered investment advisers for violations of the Marketing Rule 206(4)-1 under the Investment Advisers Act, with combined civil penalties of $1.2 million, ranging from $60,000 to $295,000 per firm. These cases were brought by the Enforcement Division's Asset Management Unit and are part of an ongoing investigation of potential Marketing Rule violations.

In each case, the firm was faulted for publishing on its website, and in some cases on social media, advertisements that violated the Marketing Rule. There were different facts and circumstances in each case, but common themes included: 1) untrue or unsubstantiated material statements of fact; 2) misleading or unsubstantiated claims regarding testimonials and endorsements; and 3) outdated third-party awards or ratings (some more than 20 years old), without disclosing the dates given or time periods covered.

Multiple firms claimed that their advice or service was "conflict free" but could not substantiate such claim. Interestingly, the SEC pointed to the fact that such firms had recognized and disclosed various conflicts of interest in Form ADV Part 2A as evidence that the firm lacked a reasonable basis for believing it would be able to substantiate such claim.

One case highlighted numerous instances in which the firm failed to disclose that an endorsement was given by a person other than a current client, that compensation was provided for a testimonial or endorsement, and that a material conflict resulted from the compensation arrangement, which was also not disclosed. The same firm included a page on its website entitled "Testimonials," but one of the quotations presented as a testimonial was from an individual who was no longer a client of the adviser. Another quotation was from an individual the firm was unable to verify had ever been a client. The SEC pointed to the following language in the Marketing Rule adopting release noting its objection to these practices:

> "We believe that this disclosure will provide investors with important context for weighing the relevance of the testimonial or endorsement. For example, an investor might reasonably give more weight to a statement made about an adviser by a current investor rather than someone who was never an investor. Additionally, without clearly attributing an endorsement to someone other than an investor, the advertisement could mislead investors who may assume the endorsement reflects the endorser's experience as an investor."

In each case, the firm agreed as part of its undertakings to review its advertisements within 45 days to confirm that they all comply with the requirements of the Marketing Rule and provide certification in writing to the SEC within 50 days compliance with such order, along with written

evidence to demonstrate compliance. One firm further agreed to revise or permanently stop disseminating all advertisements that contained testimonials or endorsements within 10 days.

There have been several enforcement sweeps to date for violations of the Marketing Rule, and according to the press release, the investigation is ongoing. More cases are expected. SEC exam staff have previously noted that they would systematically focus on each of the areas covered in Form ADV Part 1A, Item 5.L. Marketing Activities. Multiple prior enforcement cases have focused on hypothetical performance (Item 5.L.(3)). This series of cases covers practices related to Items 5.L.(1)(c), (d), and (e). Core recommends reviewing, and will work with clients to review, current marketing materials for any practices that are similar to those cited in these cases.

See Summary - https://www.sec.gov/newsroom/press-releases/2024-121