SEC Enforcement Case Summary
Atlas Financial Marketing Rule Violations

On December 20, 2024, the SEC charged investment adviser Atlas Financial Advisors, Inc. with violations of Rule 206(4)-1 under the Investment Advisers Act (the ***Marketing Rule***). Atlas allegedly made false and misleading claims about its investment strategies and their performance, failed to present net performance information alongside gross performance, was unable to substantiate performance claims upon demand by the Commission, and advertised hypothetical performance on its public website without adopting and implementing required policies and procedures. The firm was further charged with violations of Rule 206(4)-7 (the ***Compliance Rule***) and Rule 204-2 (the ***Books and Records Rule***) and agreed to a $175,000 settlement in addition to other remedial actions.

The SEC's order noted that following the November 2022 compliance date for the amended Marketing Rule, Atlas posted various advertisements on its public website that violated the Marketing Rule. Specifically Atlas advertised its "Portfolio Shield" investment strategies through statements and factsheets that presented hypothetical performance derived from model portfolios, much of which was back tested by applying the strategies to data from time periods prior to Portfolio Shield's commencement in 2015. Atlas' website claimed that this hypothetical performance was "verified by Morningstar," "validated by Morningstar," and that "[e]ach month Morningstar provides an updated Investment Detail Report on the Portfolio Shield Strategy." However, the SEC noted that Morningstar never verified Atlas' calculations nor provided reports on the strategies. Rather, an Atlas employee used a software tool offered by Morningstar to calculate the advertised hypothetical performance.

The SEC cited multiple factsheets that presented gross hypothetical performance without also presenting net hypothetical performance in violation of the Marketing Rule. The factsheets apparently attributed hypothetical performance to the Portfolio Shield strategies without disclosing that the performance was calculated from model portfolios that did not consistently follow the strategies' advertised investment formulas. Atlas' website claimed the investment advisor representative identified as the Portfolio Shield strategies' creator "also manages a long-only macro fund" and authors a report distributed to more than 7,500 subscribers every day. In fact, the representative did not manage any fund and the report had significantly fewer daily subscribers.

In addition to the content violations cited by the SEC, Atlas reportedly made material statements of fact in advertisements without being able to substantiate those claims upon demand by SEC staff in violation of Rule 206(4)-1(a)(2). Specifically, Atlas was not able to substantiate the claim on its website that "[b]ased on current and Morningstar back-tested returns, Portfolio Shield has outperformed the S&P 500 twelve out of the past fifteen years." Atlas provided hypothetical performance to a mass audience on its public website and failed to adopt and implement policies and procedures reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of the intended audience in violation of Rule 206(4)-1(d)(6)(i). Atlas' compliance manual also required it to include specific disclosures when presenting hypothetical performance in advertisements, yet Atlas failed to include the full set of prescribed disclosures.

The SEC's order further noted that Atlas did not maintain records or documents necessary to form the basis for or demonstrate the calculation of the performance derived from model portfolios that was advertised on the firm's website, in violation of Rule 204-2(a)(16). Finally, the SEC charged Atlas with unrelated Compliance Rule violations. Specifically, Atlas' compliance manual required that, when Atlas representatives traded in the same or similar securities that they recommended to clients, client business would always be transacted first. However, the SEC noted that on multiple occasions, Atlas' investment advisor representatives traded shortly before client trades in the same security.

Atlas agreed to undertake the following actions promptly (within 30-50 days) following the SEC order; a) review, evaluation and update to its trading policies and procedures; b) review, evaluate, and update to is advertising procedures related to the use of hypothetical performance; c) review all advertisements to confirm compliance with requirements of the Marketing Rule; and d) certify compliance with such undertakings in writing and provide written evidence to SEC staff in the Boston Regional Office and the Chief Counsel's Office of the Enforcement Division.

This is one of a series of enforcement actions the SEC has brought since the Marketing Rule compliance date involving violations of the rule. While the violative advertisements were readily identifiable from information posted on the firm's website, the nature of the deficiencies provides a useful roadmap for investment advisers to review in connection with their own marketing activities. We suggest that investment advisers proactively review and, if needed, update policies, procedures, and marketing materials and ensure supporting documentation is maintained and available for SEC examiners.

See Summary – https://www.sec.gov/files/litigation/admin/2024/ia-6803.pdf