SEC Marketing Rule Risk Alert
Testimonials, Endorsements & Third-Party Ratings

On December 15, 2025, the Securities and Exchange Commission (***SEC***) published a new Marketing Rule Risk Alert focused on deficient practices involving the use of testimonials, endorsements, and third-party ratings. Rule 206(4)-1 under the Adviser Act (the ***Marketing Rule***) defines "testimonials" as statements from current clients or current investors in private funds advised by the investment adviser about the client or investor's experience with the adviser or that solicit or refer potential clients or investors to the adviser, and "endorsements" as statements indicating approval, support or recommendation of the adviser from any other person. The Marketing Rule prohibits the use of testimonials and endorsements in advertisements unless the adviser satisfies certain disclosure and oversight conditions. Specifically, the adviser must provide clear and prominent disclosure with respect to the relationship between the adviser and the party, any compensation for such statement, and the related conflicts of interest. The Marketing Rule further prohibits compensating ineligible persons for providing testimonials or endorsements.

The risk alert highlighted that testimonials and endorsements were frequently included on an adviser's website or an alternative website or included in lead generation or referral platforms, by social media influencers, or as part of a refer-a-friend program, and in some instances the adviser failed to recognize that such practices constituted an endorsement or testimonial under the Marketing Rule. The SEC noted that the most common deficiency with respect to such practices was the fact that required disclosures were not made at the time the testimonial or endorsement was disseminated. The risk alert enumerated other disclosure failures as follows:

- Hyperlinking to relevant disclosures rather than presenting them clearly and prominently directly within the testimonial or endorsement;
- Failing to disclose that the party reviewing, promoting, or endorsing the adviser was a current or former client or investor;
- Providing gift cards or other compensation to reviewers quoted or linked on websites without disclosing such compensation or the related conflict of interest;
- Failing to disclose material terms of compensation arrangements or referral fees paid to promoters or including general but not specific descriptions of such arrangements; and
- Failing to disclose material conflicts of interest between the promoter and the adviser, such as their role with other advisory firms that had significant arrangements with the promoted adviser; and
- Failing to readily disclose the relationship between an adviser and an affiliated promoter up front or withholding such information until the introduction was made.

The risk alert further identified other deficiencies with respect to 1) advisers' oversight of those providing testimonials or endorsements to ensure compliance with the applicable provisions of the Marketing Rule; 2) failure to enter into a written agreement with paid promoters compensated more than the $1,000 *de minimis* amount; 3) compensation of ineligible persons who were disqualified due to prior disciplinary histories with securities regulators; and/or 4) failure to appropriately address testimonial and endorsement practices in compliance policies and procedures.

The Marketing Rule prohibits the use of third-party ratings (including awards or rankings) in advertisements unless the rating meets certain criteria and the adviser clearly and prominently discloses

material facts about such rating. The risk alert noted that third party ratings were often included on advisers' websites, social media profiles, marketing materials, press releases and other forums or materials without complying with all requirements. However, the staff observed instances where advisers failed to conduct appropriate due diligence, as required under the rule, to ensure that questionnaires or surveys used in preparing the third-party ratings were properly structured to make it equally easy to include favorable and unfavorable responses and were not designed to produce any predetermined results. These failures typically resulted from advisers' failure to establish adequate policies and procedures to obtain or review the materials used in the preparation of the ratings.

Finally, the risk alert noted the following failures with respect to disclosures related to third-party ratings:

- Failing to disclose the date on which the rating was given or period on which it was based, particularly when such information is stale;
- Including third-party rating logos in advertisements without clear identification of the third-party rater and how the rating was calculated;
- Failing to disclose direct or indirect compensation paid in connection with the rating (including payments for being considered for the rating, the use of the rater's logo, placement or upgraded/enhanced exposure, or payment to the third-party rater for referrals through a linked webpage);
- Hyperlinking to third-party websites that contained ratings without including or ensuring that required disclosures were provided; and
- Presentation of disclosures in a manner that was not clear and prominent (such as small text or hyperlinks to other website pages away from the actual rating).

In light of this risk alert, we recommend that advisers review their practices regarding any testimonials, endorsements, or other referral or recommendation arrangements with any parties (including those through placement agents or solicitors), as well any ratings, rankings, awards, or other commendations highlighted online or in marketing materials, to ensure that they comply with all relevant provisions of the Marketing Rule. CCOs may want to take this opportunity to discuss these activities with relevant fundraising, investor relations, and other business personnel to ensure that they are aware of any current or contemplated activities that may be covered under the Marketing Rule and reeducate their team on the applicable regulatory requirements.

See SEC Risk Alert – https://www.sec.gov/files/exams-riskalert-mrkt-rule-2512-508.pdf