

Special Alert

September 12, 2024

SEC Enforcement Actions Related to the Marketing Rule and Hypothetical Performance Data



On September 9, 2024, the SEC announced it had settled Administrative Proceedings with nine investment advisers for violating the Marketing Rule. The violations involved distributing advertisements that included untrue or unsubstantiated statements of material fact or testimonials, endorsements or third-party ratings that lacked required disclosures. The following is a summary of the settled Administrative Proceedings.

Abacus Planning Group

Abacus Planning Group stated on its website that it was rated a “Top 12 Financial Advisor” by Barron’s when in fact the firm was rated a “Top 1200 Financial Advisor” by Barron’s. In addition, on its website, the firm misstated the title of a third-party rating it received, identifying itself as a “Top 100 Women’s Advisor” rather than correctly identifying as “Top 100 Women Financial Advisors.” Finally, Abacus Planning Group included on its website that it received the “Pacesetter Impact Award” from Schwab, the “Future 50 Award” from Citywire RIA and was named a “Top 300 Registered Investment Advisor” from the Financial Times without specifying the years received or the time period they

covered. These ratings were received in 2007, 2019 and 2020, respectively. The misstatements were deemed misleading under the seven general prohibitions of the Marketing Rule, and the failure to provide the dates of receipt of the ratings is in violation of the third-party ratings provisions of the Marketing Rule. Among other disciplinary aspects of the proceeding, Abacus Planning Group was subject to a civil penalty in the amount of \$150,000.

AZ Apice Capital Management

AZ Apice Capital Management stated on its website that the firm is “free from conflicts of interest” and can “deliver an unbiased, conflict-free, best-in-class level of service to our clients” without providing any context to this claim. The firm’s ADV Part 2A disclosed various conflicts of interest of the firm. Therefore, AZ Apice Capital Management lacked a reasonable basis for believing it would be able to substantiate such a statement upon demand by the SEC, as required by the second of the seven general prohibitions under the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$70,000.

Droms Strauss Advisors, Inc.

Droms Strauss Advisors stated on its website that one of its investment adviser representatives “provides clients with conflict-free advice” without providing any context to this claim. The firm’s ADV Part 2A disclosed various conflicts of interest of the firm, and that ADV Part 2A applied to the referenced investment adviser representative. Therefore, the firm lacked a reasonable basis for believing it would be able to substantiate such a statement upon demand by the SEC, as required by the second of the seven general prohibitions under the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$85,000.

Howard Bailey Securities

Through various communication channels, including its website, the firm distributed materials providing that Howard Bailey Securities was the “Official Wealth Management Partner” of a specific athletic program, often with the athletic program logo included. The athletic program is not a current client of the firm. In addition, the firm provided compensation for the endorsement, so the endorsement constituted an advertisement. Howard Bailey Securities did not include required disclosures:

- (i) the endorsement was given by a person other than a current client;
- (ii) that cash compensation was provided for the endorsement; and
- (iii) any material conflicts resulting from the compensation arrangement.

Also, on its website Howard Bailey Securities included a page titled “Testimonials.” This page displayed positive quotations from individuals regarding the firm. The page included one person who was no longer a client and another whose status as a client the firm could not verify. In light of the foregoing, these statements were endorsements not testimonials. In failing to provide required

disclosures for these endorsements, Howard Bailey Securities violated the requirements of the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$90,000.

Integrated Advisors Network

Integrated Advisors Network stated on its website that the firm was “a true fiduciary that puts the client first by aligning incentives and eliminating conflicts of interest” without providing any context for this claim. The firm’s ADV Part 2A disclosed various conflicts of interest of the firm. Therefore, the firm lacked a reasonable basis for believing it would be able to substantiate such statement upon demand by the SEC, as required by the second of the seven general prohibitions under the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$325,000.

Professional Financial Strategies

On its website and various provided client reports, Professional Financial Strategies identified its principal as being recognized by Reuters AdvisePoint as one of 500 “Top Advisers” in the U.S. The firm did not disclose that this award was received more than 16 years ago in November of 2007. The failure to provide the date of receipt of the rating is in violation of the third-party ratings provisions of the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$60,000.

Beta Wealth Group

On its website, Beta Wealth Group identified itself as a “Barron’s Top Advisor” without disclosing the date the third-party rating was given or the time period it covered. This rating was attained in 2018 and has not been attained since. The failure to provide the date of receipt of the rating is in violation of the third-party ratings provisions of the Marketing Rule. In addition, on its website the firm stated that its CEO and Senior Wealth Manager “has been named one of the top wealth managers by the readers of San Diego Magazine for 14 consecutive years.” The firm could not substantiate that this rating had been achieved for 14 years. Also, this rating is not selected by readers of San Diego Magazine, but by a third-party company using methodology that did not incorporate input from readers of the magazine. Therefore, Beta Wealth Group lacked a reasonable basis for believing it would be able to substantiate such statement upon demand by the SEC, as required by the second of the seven general prohibitions under the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$80,000.

Richard Bernstein Advisors

The firm’s website stated that its principal was named one of Fortune Magazine’s “All-Star Analyst” and one of Smart Money Magazine’s “Power 30” without disclosing the date the third-party ratings were given or the time period that it covered. These ratings were received in 2001 and 2002, and 2002 and 2004, respectively. The failure to provide the date of receipt of the rating is in violation of



the third-party ratings provisions of the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$295,000.

TS Bank/d.b.a. Callahan Financial Planning

On its website the firm referred to itself as a “Member” of “Fiduciary Firm.” The “Fiduciary Firm” is a non-existent organization. The firm’s website even included a purported logo for that fictitious organization. The distribution of this fictitious information violated the general prohibitions of the Marketing Rule. Furthermore, on its website Callahan Financial Planning provided that the firm “serve[s] individuals and institutions independently, with no conflict of interest” without providing any context to this claim. The firm’s ADV Part 2A disclosed various conflicts of interest of the firm. Therefore, the firm lacked a reasonable basis for believing it would be able to substantiate such statement upon demand by the SEC, as required by the second of the seven general prohibitions under the Marketing Rule. Among other disciplinary aspects of the proceeding, the firm was subject to a civil penalty in the amount of \$85,000.

You can view the press release announcing the settled administrative proceedings [here](#).

Questions? Contact the DCS Team

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