

## Special Alert

December 29, 2025



# The SEC Division of Examinations' Additional Observations Regarding Advisers' Compliance with the Advisers Act Marketing Rule

The SEC Division of Examinations issued a Risk Alert on December 16, 2025, providing the Division's observations regarding advisers' compliance with the Testimonials and Endorsements Provisions and Third-Party Ratings Provisions of the Marketing Rule. Specifically, the Division addresses observations regarding the satisfaction of disclosure requirements and oversight and compliance practices under the Testimonial and Endorsement Provisions, as well as advisers' due diligence and disclosure requirements under the Third-Party Ratings Provisions.

### Testimonials and Endorsements Provisions

Under the Marketing Rule, testimonials are statements from current clients or current investors in private funds advised by the investment adviser, and endorsements are statements made by all other persons.

The Marketing Rule's Testimonial and Endorsement Provisions prohibit the use of testimonials or endorsements unless the adviser satisfies certain disclosure and oversight conditions. In addition, the Testimonial and Endorsements Provisions prohibit advisers from compensating certain ineligible persons from providing testimonials and endorsements, e.g. persons subject to regulatory and/or criminal disqualifying events. The disclosure, oversight and ineligible person requirements that are applicable depend upon the characteristics of the testimonial/endorsement relationship. Specifically, whether a testimonial/endorsement is provided by an affiliated person, an unaffiliated person for no or de minimis compensation, or an unaffiliated person for compensation greater than the de minimis amount, determines the applicable requirements under the Marketing Rule.

The Division reports that the most common observed reason that an endorsement or testimonial was observed to be non-compliant was that it did not provide the disclosures at the time the testimonial or endorsement was disseminated. The testimonials or endorsements were presented on advisers' websites, including websites using alternative business names of their supervised persons. The Division also notes advisers using lead-generation firms, social media influencers, and adviser referral networks, and offering "refer-a-friend" to current clients for de minimis compensation, in some instances without recognizing that such arrangements created an endorsement or testimonial.

### Clear and Prominent Disclosures

The Division notes advertisements that contained testimonials or endorsements but did not provide one or more of the required clear and prominent disclosures, such as whether the person providing the testimonial or endorsement ("promoter") was a current client or investor in a private fund advised by the investment adviser, whether the promoter was paid cash or non-cash compensation and/or had a material conflict of interest. At times, the disclosures were provided, but not in the required "clear and prominent" manner. As examples, the Division describes advisers that used hyperlinked disclosures rather than including the required clear and prominent disclosures within the testimonial or endorsement, and disclosures that were provided in a smaller or lighter font than the testimonials or endorsements to which they were related.

Also, the Division observed advisers that incorporated testimonials or endorsements from third-party websites onto the advisers' websites without clearly and prominently disclosing that those testimonials and endorsements were provided by current or former clients. The Division also observed advisers that provided compensation in the form of gift cards to clients to write reviews on third-party websites. However, the advisers did not appear to have a basis to reasonably

believe that the person giving the testimonial complied with the disclosure requirements for paid testimonials. As provided in the Marketing Rule Adopting Release, for compensated testimonials/endorsements the Marketing Rule requires the following:

- If a specific amount of cash compensation is paid, the advertisement should disclose that amount;
- If the compensation takes the form of a percentage of the total advisory fee over a period of time, then the advertisement should disclose the percentage and the time period; and
- With respect to non-cash compensation, if the value of the non-cash compensation is readily ascertainable, the disclosures should include that amount.

### Disclosure of Material Conflicts

The Division highlights advisers that did not disclose material conflicts relating to promoters having financial interest in the advisers, including clients of advisers who were also investors in the advisers or who were principals or officers of other advisory firms that had sub-advisory or other significant arrangements with the advisers.

### Oversight and Compliance

The Marketing Rule requires advisers to have a reasonable basis for believing that utilized testimonials and endorsements comply with the provisions of the Marketing Rule, including written agreements with paid promoters. The Division notes the following observations:

- Advisers that were unaware that certain arrangements constituted an endorsement or were unable to demonstrate they satisfied the reasonable basis requirement;
- Advisers that did not enter into written agreements with paid promoters receiving compensation greater than the de minimis amount, that described the activities and the terms of the compensation arrangement, or otherwise entered into agreements that did not adequately describe the activities and/or the terms of the compensation arrangement; and

- In some cases, advisers claimed that arrangements met the requirements of the de minimis exemption because each time the adviser compensated the promoter, it was for less than \$1,000, however the total compensation exceeded \$1,000 during the preceding 12 month period.

### Ineligible Persons

The Division observed advisers that did not comply with the prohibition on compensating ineligible persons for endorsements when the advisers knew, or in the exercise of reasonable care should have known, that the promoters were ineligible persons when the endorsements were disseminated.

### Promoter Affiliated with the Adviser

The Division observed advisers using promoters affiliated with advisers that did not meet the disclosure and agreement requirements, and did not meet the conditions of the exemption from the disclosure and written agreement requirements afforded to testimonials and endorsements by individuals associated with the advisers. As an example, the affiliation between the advisers and the promoters was not readily apparent, or was not disclosed, at the time the testimonials or endorsements were disseminated. Instead, the affiliates were disclosed when prospective clients or private fund investors were introduced to advisers.

### Observations Related to Third-Party Rating Provisions

The Marketing Rule prohibits the use of third-party ratings in advertisements, unless an adviser has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating meets certain criteria (the "due diligence requirement") and discloses certain information related to the ratings.

#### Due Diligence

The Division describes methods utilized by advisers to demonstrate compliance with the due diligence requirement. These methods included advisers:

- Reviewing publicly disclosed information about third-party questionnaire or survey methodologies;

- Obtaining any questionnaires or surveys used in the preparation of the rating; and/or
- Seeking representations from the third-party rating agencies regarding general aspects of how the questionnaires or surveys were designed, structured, and administered.

The Division also observed advisers that did not appear to have enough information to satisfy the due diligence requirement. The Division notes advisers that did not obtain or review a copy of the questionnaire or surveys used in preparation of the rating.

### Clear and Prominent Disclosure

The Division describes advisers that included links to third-party websites within their own advertisements, and these third-party websites contained the ratings of the advisers. Neither the advisers' nor the third-parties' websites included the required disclosures. In addition, it was not clear how the advisers could have had a reasonable basis for believing that the third-party ratings included the required clear and prominent disclosures.

Advisers included third-party ratings in their advertisements that did not clearly and prominently identify the date on which the ratings were given and the period of time on which the ratings were based. The Division highlights an instance in which an adviser referenced a range of years in which the adviser was a recipient of the third-party rating, but the dates published by the adviser included a year in which the adviser did not receive the third-party rating. Also, advisers placed third-party rating logos in their advertisements that did not clearly and prominently identify the third-party that created the ratings.

The Division describes advisers that provided direct or indirect compensation in connection with obtaining or using third-party ratings without providing the required disclosures. Advisers did not disclose such payments where the advisers posted the ratings in their advertisements, including when reprinting or including a link on the advisers' websites to the third-party rating providers' advertisements. The advisers' advertisements failed to disclose payments that were made for:

- The use of the third-party rating providers' logos or reprints of the ratings;
- The advisers' priority placement in the third-party providers' advertisements for upgraded or enhanced exposure; and

- Referrals to the advisers, such as providing links to award recipients on the third-party rating providers' websites that displayed the award recipients (i.e. the third-party rating providers received payments for referrals through the linked webpage).

The Division also notes advisers failing to provide the required disclosures in a clear and prominent manner. Specifically, advisers utilizing hyperlinks for disclosures, using smaller text font for disclosures, and placing the disclosures at the bottom of the website page away from the actual ratings.

The following is the link to the SEC's Risk Alert: <https://www.sec.gov/newsroom/whats-new/additional-observations-regarding-advisers-compliance-advisers-act-marketing-rule>

## Questions? Contact the DCS Team

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