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Preparing for Compliance with SEC's New Marketing Rule

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Content Questions & Technical Help

If you have questions about the content of this course or need technical help, please contact us via the email address below:

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Your Instructor



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Presentation Limitation

This training is strictly limited to the requirements of the U.S. Securities and Exchange Commission (“SEC”) for federally registered investment advisers as it relates to complying with the SEC’s new Marketing Rule.

Curriculum & Regulatory Resources

Curriculum Resources

[Course Outlines](#)

[Presentation Slides](#)

Regulatory Resources

[Final Rule Release for SEC's New Marketing Rule \(Actual Rule Starts on Page 405\):](#)

<https://www.sec.gov/rules/final/2020/ia-5653.pdf> .

[SEC Withdrawal & Modifications of Staff Letters Related to Rulemaking on Investment Adviser Marketing \(10/2021\):](#)

<https://www.sec.gov/files/2021-10-information-update.pdf> .

[SEC's Marketing Compliance Frequently Asked Questions:](#)

<https://www.sec.gov/investment/marketing-faq> .

[SEC Risk Alert – Examinations Focused on New Investment Adviser Marketing Rule \(9/19/22\):](#)

<https://www.sec.gov/files/exams-risk-alert-marketing-rule.pdf> .

Overview

Today's Webinar Isn't Necessarily About Substantive Requirements of the SEC's New Marketing Rule. Rather It's Focused on How To Implement the Rule in Your Firm

Agenda

- Background & Effective Date
- Updating Policy & Procedure
- Distribute P&P and Rule/Train Supervised Person
- Review Ongoing Advertising
- Notify Existing Solicitors Who Are Active of New Requirements
- Review Existing Solicitor Agreements
- Update Form ADV

SEC's New Marketing Rule Applies to All SEC Registered Investment Advisers

- Applies to Following:
 - Investment Adviser Registered with SEC
 - Includes SEC RIAs to Private Funds & Investors in Such Funds
 - Investment Adviser Required to Be Registered with SEC
- Excluded:
 - Exempt Reporting Advisers
 - State Registered Investment Advisers
 - Check with State Regulator



Background of Testimonials & Endorsements

- SEC's New Marketing Rule Merged Its Old Advertisement Rule from 1961 and Old Solicitor Rule from 1979
- Unlike Old Advertisement Rule, New Marketing Rule Allows Client Testimonials if Requirements Met
- New Marketing Rule Expands Coverage to
 - All Forms of Compensation Rather Than Merely Cash Compensation
 - Also Include Current & Prospective Investors in Private Fund
 - Eliminates Certain Requirements Such as Separate Disclosure & Form ADV 2A Delivery at Time of Referral

Effective/Compliance Date

- Passed by SEC Commissioners on 12/22/2020
- Effective Date of Rule: 5/4/2021
- New Marketing Rule Included an Extended, 18-Month Transition Period after the Effective Date
 - “Compliance Date” Is 18 Months After Effective Date
 - Prior to Compliance Date, Can Elect to Follow the New Marketing Rule in Its Entirety But Cannot Cherry Pick Parts of the Rule
- Compliance Date: 11/4/2022
- Advertising (Including Client Testimonials & Third-Party Endorsements) Is Required to Comply with New Marketing Rule After Compliance Date

Policy & Procedure Update

- Remove References to Old Rules & No-Action Letters in the Advertising & Solicitor Sections of Compliance Manual
 - No Rule 206(4)-3
 - Term “Solicitor” Has Been Redefined as “Promoter” Which Includes Clients Giving Testimonials and Non-Clients Giving Endorsements
 - Remove Reference to “Clover” No-Action Letter – Withdrawn by SEC

Policy & Procedure Update

- Add General Advertising Prohibitions to New Advertising Section of Compliance Manual
 - Must Document & Maintain Source for Each Material Fact (Essentially a Fact File for Each Advertisement)
- Include Other Criteria for Approving New Advertising

Policy & Procedure Update

- Determine Which Type of Advertising Will Be Permitted & Incorporate Requirements Into Compliance Manual Section
 - Past Investment Recommendations
 - Third-Party Ratings
 - Testimonials & Endorsements
 - Compensated versus Uncompensated
 - Investment Performance
 - Hypothetical Performance

Policy & Procedure Update

- Identify the Party Responsible for Advertising for Compliance Purposes
 - Will Another Individual Be Responsible for Promoters?
- Pre-Approval
- Spot Checking Frequency

Policy & Procedure Update

RCC Has Released a WSP/CoE Section – Advertising Template

- Includes Requirements and Policy & Procedure Options Related to General Advertising Prohibitions, Review Criteria, Past Investment Recommendations, Third-Party Ratings, Testimonials & Endorsements, Investment Performance and Hypothetical Performance
- Available in RCC Knowledge Base for Bronze, Silver, Gold, Platinum and Titanium Packages

Training

- Distributed Finalized Policy & Procedure (Compliance Manual Section) to Supervised Person
- Include Copy of Rule 206(4)-1
- Hold Training Session
- Require Supervised Person to Sign an Acknowledgement That Received and Reviewed the New Compliance Manual Section

Ongoing Advertising

- Review & Update as Necessary Existing/Ongoing Advertising Under New Rules
 - Website
 - Email Marketing
 - Paid Online Advertising

Existing Solicitor Arrangements

- Inactive Arrangements - Terminate
- Active Arrangements - Need to Contact Them In Writing About Obligation to Follow New Marketing Rule When Making Endorsements (After 11/3/22)
 - Include Copy of SEC's New Marketing Rule
 - Include Applicable Section of Advertising Manual About Disclosure Obligations
 - Include New Separate Promoter Disclosure Statement for Client to Sign
 - Request Promoter to Identify Any Endorser Conflict of Interest Disclosure Which Needs to Be Added
 - Hold Training Call with Active Promoters to Review New Requirements
 - Focus on Clear & Prominent Disclosures and Endorser Conflict of Interest Disclosure
 - Require Promoters to Sign Acknowledgement of the New Requirements & Re-Verify Not Disqualified

Update Solicitor Arrangement Agreement

- Effectively Amend Via Written Policy & Procedure Update
 - Need to Check Existing Agreement
- Use an Amendment to Existing Agreement
 - May Be Less Intimidating But More Difficult to Draft
- Use a New Promoter/Endorser Agreement

Review for Unidentified Promoters

- Review Whether Non-Cash Compensation Expansion Covers Promoters Who Do Not Have an Old Solicitor Arrangement Agreement
 - Lawyer (Mutual Understanding of Quid Pro Quo)
 - Service Provider (Mutual Understanding of Quid Pro Quo)
 - Promoter Who Received Entertainment, Tour, Outing, Sales Award or Gift
- Identify Any Internal Promoters
 - Make Sure Prominently Disclosing Status

Uncompensated Client Testimonial

- Make Sure Clients Have Agreement or Acknowledgement & Release
 - Need Attestation that Testimonial Is True
 - Confirmation of No Payment – Release from Any Royalty
 - Authorization to Share Client's Testimonial with Public
 - Reaffirm that Client Can Revoke Testimonial by Notifying Advisor
- Implement Procedures to Verify Testimonial Is Still Accurate Over Time

Form ADV Updates

- **Form ADV Part 1 Item 5, Sub-Section L**
 - An adviser will be required to state whether any of its advertisements include performance results, a reference to specific investment advice, testimonials, endorsements, or third-party ratings
 - An adviser will be required to state yes or no as to whether the adviser pays or otherwise provides cash or non-cash compensation, directly or indirectly, in connection with the use of testimonials, endorsements, or third-party ratings
- **Form ADV Part 2A Item 14**
 - Remove Reference to Rule 206(4)-3
 - Add Description of New Promoter Arrangements

Questions

Please submit any question online or email with any questions about the content of this course.

ContEd@ria-compliance-consultants.com

Thank You