



Investment Advisors Act Marketing Rule

Effective May 4, 2021

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- What and how to document oral advertisements, performance advertising, and third-party ratings



What is an Advertisement?

SIGNATURE

Quiz

Do you use Advertisements in your business?

Yes

No

What is an Advertisement?

- Any direct or indirect communication an investment adviser makes to more than one person.
- Any direct or indirect communication an investment adviser makes to one or more persons if the communication includes hypothetical performance or offers new advisory services to current clients.
- Any endorsement or testimonial for which an adviser provides direct or indirect cash or non-cash compensation including reduced advisory fees, sales awards or prizes, directed brokerage, or gifts and entertainment provided in exchange for testimonials and endorsements.

A photograph of a business meeting. In the foreground, a person's hand holds a pen over a document with financial text. Another person's hand points at a tablet displaying a bar and line chart. A third person's hand points at the same chart. The background shows other people in business attire. A blue semi-transparent banner is overlaid across the middle of the image.

Prohibited Statements

Prohibited Statements

- Untrue material statements
- Omitting material facts
- Unsubstantiated material statements of fact
- Untrue or misleading implications or inferences
- Discussion of any potential benefits without fair and balanced treatment of material risks or limitations
- “Cherry-picking”
- Advertisements that are otherwise misleading

Actual Questions That You May See

1. Did the firm engage in any marketing efforts in 2024?
2. If so, what types of marketing efforts did the firm engage in during 2024? Circle all that apply: direct mail, email outreach, dinner seminars, educational seminars, refer-a-friend type efforts, cold calling, newsletters, referral networking, social media efforts, review generation on Google or other platforms, third-party lead generators, purchased digital advertisements, radio advertisements, television advertisements, newspapers advertisements, none of the above, other.
3. Will the firm engage in any marketing efforts in 2025?
4. If yes, what types of marketing efforts does the firm plan on engaging in during 2025? Circle all that apply: direct mail, email outreach, dinner seminars, educational seminars, refer-a-friend type efforts, cold calling, newsletters, referral networking, social media efforts, review generation on Google or other platforms, third-party lead generators, purchased digital advertisements, radio advertisements, television advertisements, newspapers advertisements, none of the above, other.

A hand with a watch points at a document. In the background, there is a laptop and a document with a pie chart and bar graphs. A blue arrow-shaped banner is overlaid on the image.

Testimonials vs. Endorsements

Testimonial vs. Endorsement

A “testimonial” is any statement by a current client:

- About the client’s experience with the investment adviser or its supervised persons;
- That directly or indirectly solicits any current or prospective client to be a client of the investment adviser; or
- That refers any current or prospective client to be a client of the investment adviser.

An “endorsement” is any statement by a person other than a current client that:

- Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person’s experience with the investment adviser or its supervised persons;
- Directly or indirectly solicits any current or prospective client to be a client of the investment adviser; or
- Refers any current or prospective client to be a client of the investment adviser.

Quiz

Do you use Testimonials and Endorsements in your business?

Yes

No

Testimonial vs. Endorsement

Examples

- Websites of lead-generation firms or adviser referral networks (endorsement)
- A blogger's website review of an adviser's advisory service (endorsement or testimonial)
- A lawyer or other service provider that refers an investor to an adviser, even infrequently, depending on the facts and circumstances (endorsement or testimonial)

Testimonial vs. Endorsement

Example

What other people are saying

Reviews for [REDACTED] ★★★★★ 20 Ratings

5 Stars

✓ Wealhtender Certified Advisor Review™


★★★★★ Sep 1, 2022

[REDACTED] and his team are everything you hope to find in a financial manager. I have trust and confidence in the team managing my finances, and that was very difficult to find. The team regularly reaches out with updates and suggestion, while ensuring that I'm updated as much (or as little) as I want to be. [REDACTED] is honest, proactive, straight forward, knowledgeable and, most importantly, adaptable to the individual he is working with. He will listen to your needs and make recommendations that are best for your particular situation.

Relationship to Financial Advisor: Current Client

Compensation: This reviewer received no compensation for this review.

Conflicts of Interest: There are no material conflicts of interest.

 Kimberly P

Actual Questions Testimonial and Endorsement Questions

5. Does the firm use testimonials or endorsements in its marketing efforts as defined by the Marketing Rule, including those found in reviews and social media posts?
6. Do the firm's written policies and procedures address the proper use of testimonials and endorsements in advertising, including the use of social media by employees?

Requirements for Use

- A “clear and prominent” disclosure
- Written agreement if the compensation exceeds \$1,000 in one year
- The person must not be an “ineligible person”
 - Ten year look back period
 - Only applies to those compensated in excess of \$1,000
- Oversight
- Other disclosures

Timing and Responsibility



The required disclosures should be provided at the time such testimonial or endorsement is disseminated.



The adviser must have a reasonable belief that the solicitor is providing these disclosures.

Exemptions

A testimonial or endorsement by the investment adviser's supervised persons or a person that controls, is controlled by, or is under common control with the investment adviser is not required to have a written agreement provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or potential client

CONTRACT

Quiz

Do you use Performance Advertisements in your business?

Yes

No

Performance Advertising

- Gross and Net Performance
- Prescribed Time Periods
- “Related Performance”
- “Extracted Performance”
- “Hypothetical Performance”
- “Predecessor Performance”

Hypothetical Performance Requirements



POLICIES AND
PROCEDURES



CRITERIA AND
ASSUMPTIONS

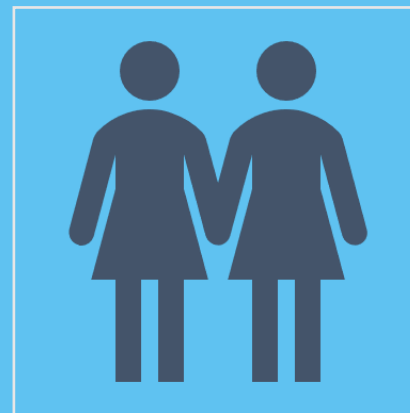


RISKS AND LIMITATIONS

Exclusions from Hypothetical Performance



In response to an unsolicited
investor request



To a private fund investor in a one-
on-one communication

Actual Performance and Hypothetical Advertising Questions From Regulators

7. Does the firm use performance representations in its marketing efforts?
8. Does the firm keep records of all data used to calculate performance representations?
9. Do the firm's written policies and procedures address the use of performance representations in marketing efforts?
10. Does the firm provide hypothetical performance representations in its marketing efforts?

The background image is a composite of two scenes. The upper scene shows two hands shaking in a firm grip, symbolizing an agreement or partnership. The lower scene shows a wooden desk with a clipboard holding a document that features a pie chart and some text. A laptop is partially visible on the right side of the desk. A blue arrow-shaped graphic points from the left towards the center, serving as a backdrop for the title text.

Third-Party Ratings

Quiz

Do you use Third-Party Ratings in your business?

Yes

No

Third-Party Ratings

Third-Party Rating: A rating or ranking of an investment adviser provided by a person who is not a related person, and such person provides such ratings or rankings in the ordinary course of its business.

Allowed subject to the general prohibitions and certain disclosure requirements.

Using Social Media

Entanglement

- Entanglement occurs when an adviser is involved with the preparation of third-party communication. While allowing “likes,” reviews, and online comments on a firm’s social media and webpages is now permitted under the new Marketing Rule, this presents issues of entanglement.

Adoption

- Adoption occurs when the adviser or an employee explicitly or implicitly endorses or approves of third-party information after its publication.
- Retweeting, reposting, or directing traffic to third-party communication are all forms of adoption.
- Hyperlinking to a third-party webpage or quoting third-party content are other examples of adoption.

Using Third-Party Ratings

- Due Diligence Requirement:
Reasonable basis for believing any questionnaire or survey used in preparation of the rating is designed so it is equally easy for participants to provide favorable and unfavorable responses and not designed to produce a predetermined result.
- Disclosure: Clearly and Prominently
 - (i) the date on which the rating was given and the time period covered;
 - (ii) the identity of the third party that created the rating, and
 - (iii) if applicable, that the adviser has compensated the rating provider, directly or indirectly, in connection with obtaining or using the rating.
- Ensure that it's not generally prohibited

Actual Questions Regarding Third-Party Ratings

11. Did the firm hire a third-party advertising agency or consultant in 2024 to assist in the firm's advertising efforts?
12. Will the firm hire a third-party advertising agency or consultant in 2025 to assist in the firm's advertising efforts?
13. Has the firm given any form of compensation to persons posting reviews, giving referrals, providing third-party ratings, or otherwise participating in any firm marketing efforts?

A close-up photograph of a person wearing a dark blue suit and a striped tie, holding two white puzzle pieces. A semi-transparent blue banner with a right-pointing arrow shape is overlaid across the center of the image. The text 'Books and Records' is written in white, bold, italicized font on the banner.

Books and Records

Books and Records

Change from the old Marketing Rule to existing Marketing Rule:

- Maintain any advertisement to **more** than one person or, if hypothetical performance is used, to **one or more persons**

Samples or Templates:

- Any brochure or form document that is to be used as a template for one-on-one communication constitutes an advertisement even if it is only handed out during one-on-one meetings

Oral Advertisements:

- May retain a copy of any written or recorded materials used by the adviser in connection with the oral advertisement

Performance:

- Advisers will be required to provide the documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any portfolios
- For Hypothetical Performance, advisers will be required to maintain supporting records including who the “intended audience” is

Third-Party Ratings and Testimonials/Endorsements:

- Reasonable belief documentation
- Questionnaires and Surveys

Additional Actual Questions That You May See

14. Does the firm have written policies and procedures that govern the retention of marketing materials?

15. Has the firm adequately disclosed its advertising efforts on Form ADV, Part 1, Item 5?

ADV 1 Item 5 (L)

L. Marketing Activities

(1) Do any of your advertisements include:

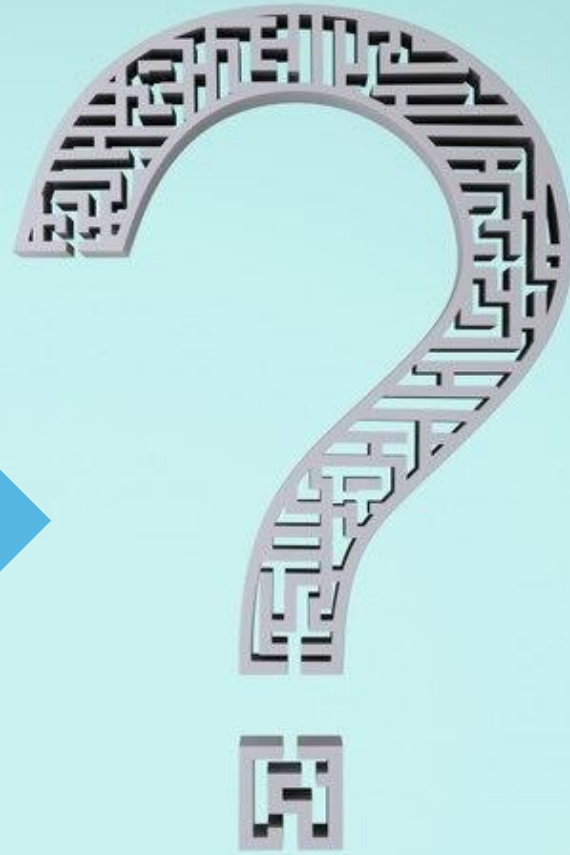
- (a) Performance results?
- (b) A reference to specific investment advice provided by you (as that phrase is used in rule 206(4)-1(a)(5))
- (c) Testimonials (other than those that satisfy rule 206(4)-1(b)(4)(ii))?
- (d) Endorsements (other than those that satisfy rule 206(4)-1(b)(4)(ii))
- (e) Third-party ratings?

(2) If you answer “yes” to L(1)(c), (d), or (e) above, do you pay or otherwise provide cash or non-cash compensation, directly or indirectly, in connection with the use of testimonials, endorsements, or third-party ratings? Yes or No

(3) Do your advertisements include hypothetical performance?

(4) Do any of your advertisements include predecessor performance?

Q&A





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