AdvisorLaw®

The Investment Advisors Act Marketing Rule in 2026

Topics We'll Discuss

01	What is an Advertisement?	• Direct communications • Indirect communications • Compensation
02	Prohibited Statements	• General rules
03	Testimonials vs. Endorsements	• Requirements for use • Timing and responsibility • Exemptions

Topics We'll Discuss

04	Performance Advertising	• Hypothetical performance requirements • Exclusions from hypothetical performance
05	Third-Party Ratings	• Using social media • Using third-party ratings
06	Books and Records	• Old Rule Ten to New Rule One • Samples or templates • What and how to document oral advertisements, performance advertising, and third-party ratings

Topics We'll Discuss

07 How to Review for Compliance

- Necessary compliance procedures
- Implementation of procedures

08 Recent Enforcement Actions

- Examples of recent enforcement actions
- What firms can learn from these actions

09 SEC Exams

- Be prepared

Discussion Question

Do you use Advertisements in your business?

A. Yes

B. No

What is an Advertisement?

- Any direct or indirect communication an investment advisor makes to more than one person.
- Any direct or indirect communication an investment advisor 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 advisor 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.

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 2025?

2. If so, what types of marketing efforts did the firm engage 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.

3. Will the firm engage in any marketing efforts in 2026?

4. If yes, what types of marketing efforts does the firm plan on engaging in during 2026? 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.

Testimonial vs. Endorsement

A "testimonial" is any statement by a current client that:

- Is about the client's experience with the investment advisor or its supervised persons;
- Directly or indirectly solicits any current or prospective client to be a client of the investment advisor; or
- Refers any current or prospective client to be a client of the investment advisor.

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

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

Discussion Question

Do you use Testimonials and Endorsements in your business?

A. Yes

B. No

Testimonial vs. Endorsement

Examples

- Websites of lead-generation firms or advisor referral networks (endorsement)
- A blogger’s website review of an advisor’s advisory service (endorsement or testimonial)
- A lawyer or other service provider that refers an investor to an advisor, even if 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

Wealthtender 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 advisor must have a reasonable belief that the solicitor is providing these disclosures.

Exemptions

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

Discussion Question

Do you use Performance Advertisements in your business?

A. Yes

B. No

Performance Advertising

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

Hypothetical Performance Requirements

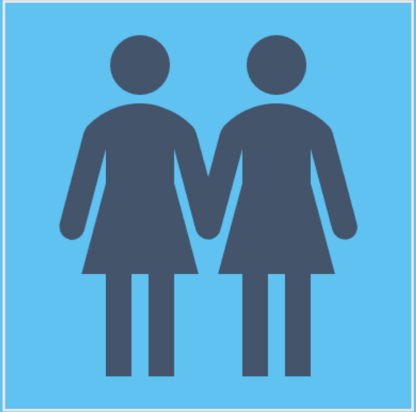
POLICIES AND PROCEDURES

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?

Discussion Question

Do you use Third-Party Ratings in your business?

Yes

No

Third-Party Ratings

Third-Party Rating: A rating or ranking of an investment advisor 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 advisor 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 advisor 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 advisor 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?

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 advisor in connection with the oral advertisement

Performance:

- Advisors 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, advisors 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?

Books and Records

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?

How to Review for Compliance

To ensure Marketing Rule compliance, firms must transition from passive policy updates to active, documented workflows. A robust compliance review framework includes:

- Pre-Approval Workflows: Implement a strict "gatekeeper" process where all marketing materials, including social media, pitch decks, and website updates, receive written approval from Compliance prior to public distribution.

- Substantiation Testing: Establish a "Substantiation File" for every marketing claim. If a pitch deck states a firm is a "top-rated advisor" or has a "conflict-free model," Compliance must audit-match this claim against Form ADV disclosures and physical evidence before publication.

How to Review for Compliance

Additionally, firms should also implement the following:

- Vendor & Influencer Oversight: Implement a formal due diligence checklist for third-party solicitors, lead-generation networks, and social media influencers. Firms must review these partners quarterly to ensure mandatory, prominent disclosures are actively displayed.

- Books & Records Audits: Conduct random monthly spot-checks on employee communications and historical website versions. Because the SEC scrutinizes record retention, Compliance must verify that third-party web hosts or archiving software are properly preserving all historical advertisements.

How to Review for Compliance

Firms can effectively implement these compliance procedures by embedding them directly into their daily operations through a few actionable steps. Firstly, firms can utilize specialized compliance software to automate the submission, review, and pre-approval workflow for all marketing material, creating an immutable audit trail. Second, firms should maintain a centralized digital repository where every outward-facing claim is mapped to its objective proof. For example, if a pitch deck highlights an accolade, the library must house the corresponding third-party rating questionnaire, disclosure text, and proof of payment. Lastly, firms should mandate the use of specialized web-archiving tools to automatically capture daily snapshots of websites and social media feeds, satisfying the SEC’s recordkeeping rules. Additionally, firms may consider integrating compliance reviews directly into their vendor onboarding, requiring third-party lead generators to sign service-level agreements (SLAs) that mandate immediate, prominent disclosures.

Recent Enforcement Actions

Washington D.C., Sept. 9, 2024

The Securities and Exchange Commission today announced settled charges against nine registered investment advisers for violating the Marketing Rule by disseminating advertisements that included untrue or unsubstantiated statements of material fact or testimonials, endorsements, or third-party ratings that lacked required disclosures. All nine firms have agreed to settle the SEC's charges and to pay $1,240,000 in combined civil penalties.

"The Marketing Rule's provisions regarding truthfulness, substantiation, and disclosure are critical to protecting investors. The advertisements at issue in each of these actions violated the Marketing Rule and posed a serious risk of misleading investors," said Corey Schuster, Co-Chief of the SEC Division of Enforcement's Asset Management Unit. "Investment advisers must comply with all aspects of the Marketing Rule, and we will continue to hold them accountable when they fail to do so."

Recent Enforcement Actions

Exaggerating the Ranking: One firm advertised that it was rated as a "Top 12 Financial Advisor" by a major publication, when the publication had instead rated them as part of a much broader "Top 1200" list.

Outdated Accolades: Firms prominently displayed multi-year-old rankings as if they were current, failing to mention the date the award was actually given.

Failure to Conduct Due Diligence: The SEC penalized firms for failing to verify the rating methodology, meaning the RIA could not prove the underlying survey wasn't rigged or biased to produce a predetermined, favorable outcome.

Recent Enforcement Actions

Every time a ranking is displayed, it must **prominently feature the following details** directly next to the award:

The Date: The exact date or time period the rating covers.

The Creator: The identity of the third party that created the rating.

The Compensation (The "Pay-to-Play" Rule): Clear disclosure if the RIA paid *any* cash or non-cash compensation to be considered, to use the logo, or for priority placement. (The SEC actively flags firms reprinting badges without disclosing that they paid licensing fees to do so)

Sample:

Award Details & Date: The "Top 100 Independent Financial Advisors" ranking was published by *Financial Alpha Magazine* on September 15, 2025, and is based on data collected between January 1, 2024, and December 31, 2024.

Compensation & Licensing Fees: [FIRM] paid a mandatory $250 application fee to be considered for this award. Additionally, after winning, [FIRM] paid a $1,500 licensing fee to *Financial Alpha Magazine* for the ongoing right to display the award logo on this website and in marketing materials. No cash or non-cash compensation was paid to any third-party to influence the rating results.

Methodology: The ranking is strictly algorithmic. *Financial Alpha Magazine* evaluated 1,200 applicants based on objective criteria, including total assets under management (AUM), client retention rates, regulatory compliance history, and years of firm experience. Client satisfaction and investment performance are explicitly **not** factored into this rating.

Limitations: This ranking is not indicative of [FIRM]’s future performance. It does not reflect the experience of any specific client, nor does it guarantee a favorable investment outcome.

Recent Enforcement Actions

The SEC charged New York-based RIA Wahed Invest, LLC for multiple violations of the Marketing Rule, heavily centering on its deployment of **celebrity and athlete promoters** to solicit public investors without the mandatory disclosures.

Missing Written Agreements: RIAs must have a formal, signed written agreement with any promoter who receives more than a *de minimis* amount of compensation or its equivalent in non-cash compensation ($1,000 over 12 months).

Failure to Give clear Disclosures: At the exact time the solicitor makes a referral, the prospective client must receive clear, prominent disclosure regarding whether the solicitor is a client, that they are being paid, and the specific conflicts of interest.

Using Ineligible Solicitors: The rule contains a strict **disqualification provision**. RIAs face direct enforcement actions if they pay a solicitor who has certain regulatory "bad actor" disqualifications (such as a FINRA or SEC bar within the past 10 years).

Recent SEC Exams

SEC Exams

In the past 18 months, we have seen 25-30 exams and every one of them has asked about marketing. Every examiner will review your website and other social media. They want to see the process. They expect the firm to be ready to evidence compliance reviews of any marketing.


Q&A

AdvisorLaw®

11001 W 120th Avenue, Suite 100, Broomfield, CO 80021

advisorlawllc.com | **(303) 952-4025**