



USE OF CLIENT TESTIMONIALS IN ADVERTISING

The SEC has recently made amendments to Rule 206(4)-1, allowing for limited use of testimonials in advertising.

As stated in its recent Release 2020-334, issued on December 22, 2020, the amended marketing rule prohibits the use of testimonials and endorsements in an advertisement, unless the adviser satisfies certain disclosure, oversight, and disqualification provisions:

- *Disclosure.* Advertisements must clearly and prominently disclose whether the person giving the testimonial or endorsement (the “promoter”) is a client and whether the promoter is compensated. Additional disclosures are required regarding compensation and conflicts of interest. There are exceptions from the disclosure requirements for SEC-registered broker-dealers under certain circumstances. The rule will eliminate the current rule’s requirement that the adviser obtain from each investor acknowledgements of receipt of the disclosures.
- *Oversight and Written Agreement.* An adviser that uses testimonials or endorsements in an advertisement must oversee compliance with the marketing rule. An adviser also must enter into a written agreement with promoters, except where the promoter is an affiliate of the adviser or the promoter receives de minimis compensation (i.e., \$1,000 or less, or the equivalent value in non-cash compensation, during the preceding twelve months).
- *Disqualification.* The rule prohibits certain “bad actors” from acting as promoters, subject to exceptions where other disqualification provisions apply.

The rule prohibits the use of third-party ratings in an advertisement, unless the adviser provides disclosures and satisfies certain criteria pertaining to the preparation of the rating.

The rule also prohibits the following in any advertisement:

- gross performance, unless the advertisement also presents net performance;
- any performance results, unless they are provided for specific time periods in most circumstances;
- any statement that the Commission has approved or reviewed any calculation or presentation of performance results;
- performance results from fewer than all portfolios with substantially similar investment policies, objectives, and strategies as those being offered in the advertisement, with limited exceptions;
- performance results of a subset of investments extracted from a portfolio, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio;



- hypothetical performance (which does not include performance generated by interactive analysis tools), unless the adviser adopts and implements policies and procedures reasonably designed to ensure that the performance is relevant to the likely financial situation and investment objectives of the intended audience and the adviser provides certain information underlying the hypothetical performance;
- predecessor performance, unless there is appropriate similarity with regard to the personnel and accounts at the predecessor adviser and the personnel and accounts at the advertising adviser. In addition, the advertising adviser must include all relevant disclosures clearly and prominently in the advertisement.

Adhering to the above guidelines, the Firm will allow the use of testimonials based on the following parameters:

1. All testimonials must not include any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not misleading;
2. Material facts are those that are important, significant or essential to a reasonable person in deciding whether or not to engage in a particular transaction;
3. All statements contained within any testimonial must be able to be proven as true;
4. All statements contained within any testimonial must not include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn from the testimonial;
5. All statements contained within any testimonial must not discuss any potential benefits connected with or resulting from an investment in an unfair or unbalanced manner;
6. Any testimonials must be made by a current advisory client, current client at the time the testimonial was made;
7. Client must not have received any cash or non-cash compensation in exchange for the testimonial;
8. No testimonials may make any references to any specific past performance; and
9. All testimonials must contain disclosures appropriate for the testimonial, including “No, Not, May” and related language.
10. As with all advertising and sales materials, all such materials must be submitted to and approved by compliance and/or legal counsel for Wealth Watch prior to use.

Turn-Around time for Compliance Approval:

Generally, the Firm will approve, make suggested changes, or disapprove potential testimonials in writing within 48 to 72 hours from submission.

Third-Party Communications

Third-party communications are companies and/or sites that allow for clients and the public to leave or post comments; Facebook, Google Reviews, Yelp, and the like. It is the policy of the Firm to allow its IARs to “claim” their site or business. If an IAR claims the business they may not modify, edit, remove, delete, hide, or post a response to any comments left on the site. Comments and ‘likes’ in an IAR’s business Facebook or ‘endorsements or comments in LinkedIn are also permissible provided that the IAR does not edit, modify, remove, delete, hide, or post a response to any comment, like, or endorsement left. The IAR may not offer cash or



non-cash compensation to any client or prospect for any testimonial, comment, or like. IARs are prohibited from soliciting or requesting comments or endorsements for any such third-party site.

Find -An- Advisor Sites

Enrollment in any ‘Find- an- Advisor’ site may only be made after the site has been reviewed and approved by compliance. This requirement only applies to sites where the IAR has the ability to opt-in.

