RISK ALERT
DIVISION OF EXAMINATIONS

December 16, 2025

Additional Observations Regarding Advisers' Compliance with the Advisers Act Marketing Rule*

I. Introduction

The Division of Examinations (the "Division") is issuing this Risk Alert to provide investment advisers, investors, and other market participants additional information regarding investment advisers' compliance with amended Rule 206(4)-1 (the "Marketing Rule") under the Investment Advisers Act of 1940 (the "Advisers Act").[1] The Division previously published a risk alert to: share initial observations related to compliance with the Marketing Rule's "General Prohibitions," Advisers Act Rule 206(4)-7 (the "Compliance Rule"),[2] and Advisers Act Rule 204-2 (the "Books and Records Rule"); and encourage accurate completion of the Marketing Rule items contained in Form ADV.[3] This Risk Alert addresses the staff's observations regarding advisers' compliance with the conditions set forth in the following provisions of the Marketing Rule: Advisers Act Rule 206(4)-1(b) (the "Testimonials and Endorsements Provisions") and Rule 206(4)-1(c) (the "Third-Party Ratings Provisions"). In particular, the Division addresses observations regarding advisers' satisfaction of disclosure requirements and oversight and compliance practices under the Testimonials and Endorsements Provisions, as well as advisers' due diligence and disclosure requirements under the Third-Party Ratings Provisions.

This Risk Alert does not address all observed deficiencies related to the Marketing Rule. In addition, deficiencies described in this Risk Alert may also be deficiencies under other parts of

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* This Risk Alert represents the views of the staff of the Division of Examinations (the "Division"). This Risk Alert is not a rule, regulation, or statement of the Securities and Exchange Commission (the "SEC" or the "Commission"). The Commission has neither approved nor disapproved the content of this Risk Alert. This Risk Alert, like all staff statements, has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

1 *See* Division, FY2024 Priorities and FY2023 Priorities. *See also*, SEC, Final Rule: Investment Adviser Marketing, Advisers Act Rel. No. 5653 (Dec. 22, 2020) ("Marketing Rule Adopting Release") (adopting amendments under the Advisers Act to update the rules that govern adviser marketing). The Marketing Rule applies to investment advisers registered or required to be registered with the SEC under Section 203 of the Advisers Act.

2 *See* Advisers Act Rule 206(4)-7 and Compliance Programs of Investment Companies and Investment Advisers, Advisers Act Rel. No. 2204 (Dec. 17, 2003) (requiring each registered adviser to adopt and implement policies and procedures to address compliance with the Advisers Act and the rules thereunder, and to review, at least annually, its compliance policies and procedures to assess their adequacy and the effectiveness of their implementation. The Commission has stated that Advisers should consider the need for interim reviews of their policies and procedures under Rule 206(4)-7 in response to regulatory developments, such as the adoption of the Marketing Rule.).

3 *See* Division, Risk Alert: Initial Observations Regarding Advisers Act Marketing Rule Compliance (April 17, 2024) (describing the Division's observations regarding advisers' compliance with the Marketing Rule with respect to items contained in Form ADV, the Compliance Rule, the Books and Records Rule, and the Marketing Rule's "General Prohibitions." The General Prohibitions are in paragraphs (a)(1) through (a)(7) of the Marketing Rule).

the Marketing Rule or other rules under the Advisers Act. For example, this Risk Alert does not include observations regarding instances where the promoter who provides endorsements or testimonials is also acting as an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act or a broker or dealer within the meaning of Sections 3(a)(4) or 3(a)(5) of the Exchange Act.[4]

The Division continues to focus on advisers' compliance with the Marketing Rule.[5] The staff is sharing these observations to continue to promote compliance with the Marketing Rule.

II. Observations Regarding Compliance with the Marketing Rule's Testimonials and Endorsements and Third-Party Ratings Provisions

The staff reviewed advisers' advertisements disseminated to current or prospective clients or current or prospective investors in private funds advised by the investment adviser that included testimonials (which are statements from current clients or current investors in private funds advised by the investment adviser), endorsements (which are made by all other persons), or third-party ratings.[6] Below are the staff's observations regarding advisers' compliance with the Testimonials and Endorsements and the Third-Party Ratings Provisions.

A. Observations Related to the Testimonials and Endorsements Provisions

The Marketing Rule's Testimonials and Endorsements Provisions prohibit the use of testimonials and endorsements in advertisements unless the adviser satisfies certain disclosure and oversight conditions. These Provisions also prohibit advisers from compensating certain ineligible persons for providing testimonials or endorsements.[7]

The staff observed advisers using testimonials and endorsements that did not appear to comply with all or some of the requirements for both compensated and uncompensated testimonials and endorsements. 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.[8] Such testimonials or endorsements were often

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4 *See* Marketing Rule Adopting Release, *supra* note 1, pp. 56-58 (any promoter must determine whether it is subject to statutory or regulatory requirements under Federal law, including the requirement to register as an investment adviser pursuant to the Advisers Act and/or as a broker-dealer pursuant to section 15(a) of the Exchange Act, respectively).

5 *See* Division, Risk Alert: Examinations Focused on the New Investment Adviser Marketing Rule (June 8, 2023); *See also* Risk Alert: Examinations Focused on New Investment Adviser Marketing Rule (Sept. 19, 2022).

6 *See* Advisers Act Rule 206(4)-1(e)(1), which defines "advertisement" for purposes of the Marketing Rule.

7 *See* Advisers Act Rule 206(4)-1(b), which prohibits an adviser from compensating a person, subject to certain qualifying exemptions, directly or indirectly, for a testimonial or endorsement, unless the investment adviser complies with certain disclosure, oversight, and compliance requirements, and if the recipient of the compensation is a disqualified person. *See also* Advisers Act Rule 206(4)-1(e)(4), which defines certain disqualifying events, and Advisers Act Rule 206(4)-1(e)(9) (defines an ineligible person as a "person who is subject to a disqualifying Commission action or is subject to any disqualifying event" and specifies certain persons associated with ineligible persons who are also ineligible).

Rule 206(4)-1(b)(i) states that testimonials and endorsements disseminated for no compensation or *de minimis compensation* are not required to comply with certain of the Testimonial and Endorsement Provisions. Lastly, Rule 206(4)-1(e)(2) defines "*de minimis* compensation" to be "compensation paid to a person for providing a testimonial or endorsement of a total of $1,000 or less."

8 *See* Advisers Act Rule 206(4)-1(b)(1).

presented on advisers' websites, including websites using alternative business names of their supervised persons ("d/b/a" websites). The staff also observed advisers utilizing lead-generation firms, social media influencers, and adviser referral networks, and offering "refer-a-friend" programs to current clients for *de minimis* compensation (in some instances without recognizing that certain arrangements created an endorsement or testimonial).

Additionally, while the staff observed that many advisers utilizing testimonials or endorsements in advertisements updated their written compliance policies and procedures under the Compliance Rule to address this practice, others had not.[9] Some of the advisers that did not update their compliance policies and procedures, as well as some advisers that updated their policies and procedures but did not implement them, disseminated advertisements that did not appear to comply with the Marketing Rule.

Below are additional details regarding the staff's observations applicable to the Testimonials and Endorsements Provisions.[10]

Clear and prominent disclosures.[11] The staff observed advertisements that contained testimonials or endorsements that did not provide one or more of the required clear and prominent disclosures, such as whether the promoter (*i.e.*, the person providing a testimonial or endorsement) was a current client or investor in a private fund advised by the investment adviser, and, if applicable, whether the promoter was paid cash or non-cash compensation and/or had a material conflict of interest.[12] In some instances, the required disclosures were provided, but not made in a clear and prominent manner. For example, the staff observed advisers that used hyperlinked disclosures rather than including the required clear and prominent disclosures within the testimonial or endorsement,[13] and disclosures that were not clear and prominent because the disclosure was in a smaller or lighter font than the testimonials or endorsements to which they were related.[14]

Additionally, the staff observed advisers that incorporated into advertisements current client testimonials or former client 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. Finally, the staff observed advisers that provided compensation in the form of gift cards to clients to write reviews on third-party websites;

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9 The staff's observations in this Risk Alert regarding policies and procedures relating to compliance with the Marketing Rule – except for those required for hypothetical performance by paragraph (d)(4) of the rule – generally fall under the Compliance Rule.

10 *See* Advisers Act Rule 206(4)-1(b).

11 *See* Marketing Rule Adopting Release, *supra* note 1, pp. 90-92 (the Commission adopted several disclosure requirements as conditions for using testimonials and endorsements in advertisement, and it required certain of these disclosures to be "clear and prominent" to promote their salience and impact).

12 *See* Advisers Act Rule 206(4)-1(b)(1)(i).

13 *See* Marketing Rule Adopting Release, *supra* note 1, p. 90 (stating that the clear and prominent standard requires that the disclosures be included within the testimonial or endorsement, and that it would not be consistent with the clear and prominent standard to use a hyperlink to include the disclosures required under the final rule).

14 *See* Marketing Rule Adopting Release, *supra* note 1, p. 90 ("In order to be clear and prominent, the disclosures must be at least as prominent as the testimonial or endorsement.").

however, they did not appear to have a basis to reasonably believe that the person giving the testimonial complied with the disclosure requirements for paid testimonials.

Disclosure of material terms of compensation arrangements. The staff observed advisers that did not disclose the material terms of compensation arrangements, including a description of the compensation provided directly or indirectly to the promoters for the testimonials or endorsements included in their advertisements.[15] The staff also observed advisers providing generic disclosures about compensation arrangements that omitted certain material information. For example, the staff observed advisers that disclosed that promoters, including social media influencers, received compensation from advisers for client referrals but omitted material information about the compensation terms of the referral payments.[16]

Disclosure of the material conflicts. The staff observed advisers that did not disclose material conflicts resulting from the advisers' relationships with promoters and/or the compensation arrangements for the testimonials or endorsements included in the advisers' advertisements.[17] For example, the staff observed advisers that did not disclose material conflicts resulting from promoters having financial interests in the promoted advisers, including clients of advisers who were also investors in the promoted advisers or who were principals or officers of other advisory firms that had sub-advisory or other significant arrangements with the promoted advisers.

Oversight and compliance. The oversight and compliance provisions for testimonials and endorsements require advisers to have a reasonable basis for believing that the testimonials or endorsements complied with the Testimonials and Endorsements Provisions ("reasonable basis for belief requirement") and written agreements with paid promoters.[18] The staff observed advisers that did not appear to comply with these provisions. For example, the staff observed:

- Advisers that were either unaware that certain arrangements involved statements that met the definition of an endorsement or were unable to demonstrate that they satisfied the reasonable basis for belief requirement. For example, among other things, the advisers' compliance policies and procedures, written agreements with promoters, and/or other

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15 *See* Advisers Act Rule 206(4)-1(b)(1)(ii).

16 *See* Marketing Rule Adopting Release, *supra* note 1, p. 96 ("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 such percentage and time period. With respect to non-cash compensation, if the value of the non-cash compensation is readily ascertainable, the disclosures should include that amount.").

17 *See* Advisers Act Rule 206(4)-1(b)(1)(iii).

18 *See* Advisers Act Rule 206(4)-1(b)(2)(i) and Rule 206(4)-1(b)(2)(ii). *See also* Marketing Rule Adopting Release, *supra* note 1, pp. 103-104 (if an adviser does not provide the required disclosures itself, the adviser must reasonably believe that the promoter discloses the required information. "To have a reasonable belief, an adviser may provide the required disclosures to a promoter and seek to confirm that the promoter provides those disclosures to investors. For example, if a blogger or social media influencer is endorsing and referring clients to the adviser through his or her website or platform, the adviser may provide such blogger or influencer with the required disclosures and confirm that they are provided appropriately on his or her respective pages. The adviser may choose to include provisions in its written agreement with the promoter, requiring the promoter to provide the required disclosures to investors."). *See also* Advisers Act Rule 204-2(a)(15)(ii), which requires advisers to maintain documentation substantiating the adviser's reasonable basis for believing that a testimonial or endorsement complies with Advisers Act Rule 206(4)-1).

documentation did not enable the adviser to satisfy the reasonable basis for belief requirement.

- Advisers that did not enter into or maintain written agreements with paid promoters (who received compensation above the *de minimis* threshold) that described the scope of the agreed-upon activities and the terms of the compensation for those promotion activities. Advisers also entered into written agreements with promoters that did not fully describe the scope of the promotion activities agreed upon or the terms of their compensation. In some cases, advisers claimed the arrangements met the requirements of the exemption for *de minimis* compensation 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 months and, thus, did not meet the definition of *de minimis* compensation set forth in the Marketing Rule.[19]

Ineligible persons. The staff observed advisers that did not appear to 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.[20] For example, promoters who were disqualified due to their disciplinary histories with state securities regulators received compensation.[21]

Promoter affiliated with the adviser. The staff observed advisers using promoters affiliated with the advisers that did not meet disclosure and agreement requirements of the Testimonials and Endorsements Provisions and did not meet the conditions of the exemption from the disclosure and written agreement requirements afforded to testimonials or endorsements by certain individuals associated with the advisers.[22] For example, the affiliation between the advisers and such promoters was not readily apparent to, or was not disclosed to, clients or investors in private funds at the time testimonials or endorsements were disseminated. Instead, the affiliations were disclosed when the prospective clients or investors were introduced to the advisers.

B. Observations Related to the Third-Party Rating Provisions

The Marketing Rule's Third-Party Rating Provisions prohibit 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 ratings meet certain criteria and discloses certain information related to the ratings.[23]

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19 *See* Advisers Act Rule 206(4)-1(b)(4)(i) and Rule 206(4)-1(e)(2).

20 *See* Advisers Act Rule 206(4)-1(b)(3).

21 *See* Advisers Act Rule 206(4)-1(e)(9) for the definition of ineligible persons and Rule 206(4)-1(e)(3) and (4) for the definition of the terms "disqualifying Commission action" and "disqualifying event." State actions are included in the definition of disqualifying event under Advisers Act Section 203(e)(9).

22 *See* Advisers Act Rule 206(4)-1(b)(4)(ii) (partially exempts a testimonial or endorsement by specified advisory personnel, as long as the affiliation between the adviser and such persons are readily apparent to or disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the adviser documents such persons' status at the time the testimonial or endorsement is disseminated).

23 *See* Advisers Act Rule 206(4)-1(c).

The staff observed advisers using third-party ratings without appearing to comply with all or some of the requirements for use of third-party ratings. Such third-party ratings were often included on advisers' websites (including d/b/a websites), as well as social media profiles or accounts, marketing brochures or pitchbooks, press releases, newsletters, and blogs, among others. While the staff observed that many advisers utilizing third-party ratings in advertisements updated their compliance policies and procedures to address this practice, others had not. Some of the advisers that did not update their policies, as well as advisers that had updated their policies and procedures but did not implement them, disseminated advertisements that did not appear to comply with the Marketing Rule.

Additional details are provided below regarding the staff's observations related to advisers' compliance with the Third-Party Rating Provisions.

Due diligence. The staff observed advisers using several methods to demonstrate that third-party ratings included in advertisements were in compliance with the Third-Party Rating Provision's "due diligence requirement" (*i.e.*, the requirement to have a reasonable basis for believing that questionnaires or surveys used in the preparation of the third-party ratings were structured to make it equally easy for a participant to provide favorable and unfavorable responses and were not designed to produce any predetermined results).[24] For example, such advisers typically: (1) reviewed publicly disclosed information about third-party questionnaire or survey methodologies; (2) obtained any questionnaires or surveys used in the preparation of the rating; and/or (3) sought representations from the third-party rating agencies regarding general aspects of how the questionnaires or surveys were designed, structured, and administered.

However, the staff also observed advisers that did not appear to have sufficient information to form a reasonable basis about the design or structure of questionnaires that were used in the preparation of third-party ratings included in advertisements (*e.g.*, websites, social media accounts, pitch books, and email communications, among other mediums). In these instances, the advisers generally had neither developed policies and procedures for satisfying the due diligence requirement, nor had the advisers otherwise taken steps to meet this requirement, such as by obtaining or reviewing a copy of the questionnaires or surveys that were used in preparation of the ratings.

Clear and prominent disclosures. The staff observed advisers that included third-party ratings in advertisements without providing some or all of the required clear and prominent disclosures. These advisers also did not appear to have a reasonable belief that the third-party ratings made such disclosures clearly and prominently.[25] For example, the staff observed:

- Advisers that included links to third-party websites within their own advertisements, and these third-party websites contained the ratings of the examined advisers. 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.

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[24] *See* Advisers Act Rule 206(4)-1(c)(1).

[25] *See* Advisers Act Rule 206(4)-1(c)(2). *See also* Marketing Rule Adopting Release, *supra* note 1, p. 160 ("In order to be clear and prominent, the disclosures must be at least as prominent as the third-party rating.").

- Advisers that 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 upon which the ratings were based. In some cases, the third-party ratings were listed with reference to a range of years in which the adviser was the recipient of the third-party rating, but the dates included by the adviser listed a year in which the adviser did not receive the award.

- Advisers placed third-party rating logos in their advertisements that did not clearly and prominently identify the third party that created and tabulated the ratings (*i.e.,* the logo did not clearly identify the third parties, and the advisers did not otherwise clearly and prominently include such disclosures).

- Advisers that provided direct or indirect compensation in connection with obtaining or using third-party ratings without including the required disclosures. For example, when advisers paid third-party rating providers, the staff observed that some 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 did not, among other things, disclose payments that were made for: (1) the use of the third-party rating providers' logos or reprints of the ratings; and (2) the advisers' priority placement in the third-party providers' advertisements or for upgraded or enhanced exposure. The advisers also did not disclose payments that were made for 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.*, third-party rating providers received payments for referrals through the linked webpage).[26]

- Advisers that paid third-party rating providers fees to be considered for the ratings but did not disclose such payments where the advisers posted the ratings.

- Advisers that did not provide the required disclosures in a clear and prominent manner (*e.g.*, using hyperlinks for the disclosures that were required to be "clear and prominent," using smaller text font for disclosures, and placing the disclosures at the bottom of the website pages away from the actual ratings).

[26] *See* Advisers Act Rule 206(4)-1(c)(2)(iii) requires clear and prominent disclosures when "compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating." *See also* Marketing Rule Adopting Release, *supra* note 1, p. 162 (the disclosure requirement provides consumers with important context for weighing the relevance of the statement in light of the compensation incentive).

III. Conclusion

In sharing these staff observations, the Division encourages advisers to reflect upon their own practices, policies, and procedures and to implement any appropriate modifications to their training, supervisory, oversight, and compliance programs.

This Risk Alert is intended to highlight for firms risks and issues that Division staff has identified. In addition, this Risk Alert describes risks that firms may consider to (1) assess their supervisory, compliance, and/or other risk management systems related to these risks, and (2) make any changes, as may be appropriate, to address or strengthen such systems. Other risks besides those described in this Risk Alert may be appropriate to consider, and some issues discussed in this Risk Alert may not be relevant to a particular firm's business. The adequacy of supervisory, compliance and other risk management systems can be determined only with reference to the profile of each specific firm and other facts and circumstances.