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## Down to the Wire: Mgrs Scrambled to Comply With Marketing Rule as Deadline Hit

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Genna Garver, a partner with Troutman Pepper, is quoted in the November 7, 2022 *FundFire* article, [“Down to the Wire: Mgrs Scrambled to Comply With Marketing Rule as Deadline Hit.”](#)

“I’ve never seen a rule rollout like this in my... 22 years of practice,” said Genna Garver, a partner at Troutman Pepper.

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When some firms thought that they’d finally mastered the regulation and began training their employees on it, their staff detected issues that the firms hadn’t thought about, she added.

“Right now, we don’t know what we don’t know,” Garver said. “The industry is expecting... continued discussion and clarification.”

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But, GIPS-compliant firms have their own hurdles with the SEC’s regulation, Garver said. The rule diverges from GIPS in some ways and identifying those areas has been a challenge, she said. For example, under GIPS, a composite could show subsets of different client accounts, but under the marketing rule, it would be treated as hypothetical performance information subject to additional conditions for it to be used.

“Thinking of something that was permissive before as something that’s like the riskiest thing you could do in marketing [has] taken a little reprogramming,” she said.

As managers seek to calculate their track records, they also have to have the necessary books and records to create and back up their estimates, Garver added.

“If you have a different performance table right now that reflects [what] different periods are like inception to date, month to date, [or] year to date, you have to go back and figure out those specific time periods and present them with equal prominence,” she said. “To some people, that’s not a big deal, but for others, it is a big deal.”

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“If you win an accolade, is it a rating? Or is it an award that is actually an endorsement?” Garver said. “The ambiguities are endless.”

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