

Troutman Pepper's "Practically Speaking" Series Regarding the SEC's New Marketing Rule

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In December 2020, the Securities and Exchange Commission (SEC) finalized amendments to its advertising and solicitation rules under the Investment Advisers Act of 1940, as amended.

Those finalized amendments merged the Advisers Act's current advertising rule (Rule 206(4)-1) with the cash solicitation rule (Rule 206(4)-3) under a new rule: Rule 206(4)-1, the Investment Adviser Marketing rule. See our client alert at the time.

SEC-registered investment advisers (RIAs) must comply with the new marketing rule by November 4, 2022. On September 19, the SEC issued a [risk alert](#) – before the new marketing rule goes into effect – indicating that they are ready to start examinations on compliance with the new marketing rule immediately.

With effective date of the new marketing rule looming, RIAs should have, among other things, reviewed any marketing materials that will continue to be used after November 4 and revised them, as well as their marketing policies and procedures, to comport with the new marketing rule and undertaken training with their entire team on the rule's requirements and the new policies and procedures.

If you and your colleagues were not early adopters and have not yet completed your preparation for complying with the new rule, now is the "last call". Early adopters should have this well in hand. For those complying from the November 4 date, we suggest ensuring that you have done at least the following before November 4:

- Modify your compliance policies and procedures to incorporate the new rule's requirements;
- Review all of your solicitor and other *quid pro quo* arrangements;
- Ensure you have all the necessary substantiating documentation for your marketing materials;
- If gross returns are included in marketing materials, ensure net returns are not only included but included with equal prominence; and take the opportunity to re-vet the performance record
- identify and confirm hypothetical performance information (a/k/a projections) is compliant;
- Ensure testimonials and endorsements are identified and vetted against the rule's requirements;
- Train your marketing team on the rule's requirements.
- Be prepared to explain to your audience (i.e., potential investors or clients) the changes in your marketing materials.

To guide you, Troutman Pepper's "Practically Speaking" series of alerts provide succinct, high-level guidance

regarding the five aspects of the new rule that our attorneys see as most impactful on RIAs' marketing efforts. ***This is not intended to be an exhaustive summary of the new marketing rule.***

These five alerts provide guidance regarding:

1. [Determining whether a communication is an advertisement for the purposes of the new marketing rule;](#)
2. [The new marketing rule's seven general prohibitions regarding advertisements;](#)
3. [The use of testimonials and endorsements in advertisements after November 4, 2022;](#)
4. [The use of track records in advertisements after November 4, 2022;](#) and
5. [The use of hypothetical performance information in advertisements after November 4, 2022.](#)

You can access the alerts individually by clicking on the corresponding titles above. Please reach out to The Troutman Pepper Private Funds + Investment Management Services team with any questions.

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