Proskauer

SEC Issues Risk Alert to Remind Advisers of Core Compliance Expectations

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On December 16, 2025, the Securities and Exchange Commission's ("***SEC***") Division of Examinations issued a Risk Alert highlighting several recurring deficiencies in investment advisers' compliance with the provisions of Advisers Act Rule 206(4)-1 (the "***Marketing Rule***") governing use of testimonials and endorsements as well as third-party ratings. These observations serve as useful reminders of the basic compliance expectations that advisers must continue to uphold. The tone of the Risk Alert is consistent with the SEC's 2026 Exam Priorities, which emphasize a continued focus on foundational requirements of the Advisers Act.

Many of the deficiencies highlighted in the Risk Alert, such as those involving compensation paid to influencers, soliciting reviews on third-party websites and "refer a friend" programs, primarily arise in a retail-facing context, which aligns with recent senior SEC staff statements stressing a "laser-focused" commitment to protecting retail investors. However, private fund advisers should also take note, as private funds are mentioned numerous times and several of the practices discussed in the Risk Alert are also frequently encountered in private fund marketing, even if manifested in more nuanced or industry-specific ways. The SEC continues to stress Marketing Rule compliance and has recently brought enforcement actions even for "technical" violations, demonstrating the importance of careful attention to these issues by all advisers.

Deficiencies Related to the Testimonials and Endorsement Provisions

- *Clear and Prominent Disclosures*: The most common observed reason that an endorsement or testimonial was non-compliant was that it did not provide the required disclosures regarding a promoter's status, compensation and material conflicts of interest at the time the testimonial or endorsement was disseminated. In addition, in some cases, disclosures were made less noticeable through font sizes that were too small or colored so as to be difficult to read, or by requiring viewers to follow a hyperlink in order to view the disclosure. As a result, the

disclosure failed to satisfy the Marketing Rule's requirement that it be clear and prominent. Advisers also republished client reviews from third-party websites without clearly disclosing the reviewers' status.

- *Disclosure of Material Terms of Compensation Arrangements*: Some advisers failed to disclose the material terms of compensation paid to promoters for testimonials. For example, they provided compensation for clients to write reviews without having a basis to believe that the review complied with the terms of the Marketing Rule. Other advisers used generic disclosures that omitted the material compensation terms of those arrangements.
- *Disclosure of Material Conflicts*: Certain advisers failed to disclose material conflicts arising from their relationships with promoters or related compensation arrangements, including situations where promoters had financial interests in the adviser, such as clients who had also invested in the adviser, or who were affiliated with advisory firms that had sub-advisory or other significant arrangements with the promoted advisers.
- *Oversight and Compliance*: Advisers were in several cases observed to have neither written agreements with paid promoters describing the scope of the agreed-upon activities nor a reasonable basis for believing testimonials or endorsements complied with the Marketing Rule. They often failed to recognize arrangements as endorsements or enter written agreements with paid promoters.
- *Ineligible Persons*: Certain advisers violated the prohibition on compensating "ineligible persons" by paying individuals they knew or should have known were disqualified, including promoters with disciplinary histories that rendered them ineligible.
- *Promoter Affiliated with the Adviser*: Advisers used promoters affiliated with the advisers without satisfying requirements to provide disclosure and have a written agreement with the affiliate and without complying with the conditions of the exemption from those requirements because the affiliation was not readily apparent. The Risk Alert specifically references instances where investors in private funds were not provided the required disclosure at the time testimonials or endorsements were disseminated, and instead only at a later time.

Deficiencies Related to the Third-Party Rating Provisions

- *Clear and Prominent Disclosures*: Advisers displayed rating logos without identifying the entity that produced or tabulated the rating, disclosing fees paid to rating providers where the ratings appeared, or clearly and prominently identifying the date on which the ratings were given and the period of time upon which the ratings were based. As noted above when discussing the analogous requirement for

testimonials and endorsements, certain advisers used fonts that were too small or required viewers to follow a hyperlink to view the relevant disclosure.

- *Due Diligence:* Certain advisers failed to develop a reasonable basis for believing that questionnaires or surveys used in the preparation of the third-party ratings were not designed to produce any predetermined results. The Risk Alert notes with approval that certain advisers reviewed publicly disclosed information about third-party questionnaire or survey methodologies, obtained any questionnaires or surveys used in the preparation of the rating, and/or sought representations from the third-party rating agencies regarding general aspects of how the questionnaires or surveys were designed, structured, and administered. Other advisers, however, did not take steps to meet this reasonable belief requirement.

Takeaways

Although many of the deficiencies mentioned in the Risk Alert arise more frequently in retail-facing contexts, the underlying compliance principles apply equally to private fund advisers. The Risk Alert's focus on clear and prominent disclosures, accurate characterization of reviewer or promoter status, and transparency around compensation is especially relevant given the SEC's continued emphasis on Marketing Rule compliance in private fund examinations.

All advisers, including private fund advisers, should carefully review marketing and investor materials, paying close attention to disclosures surrounding the identity of rating providers, any fees paid in connection with awards or rankings, and any material conflicts or compensation tied to testimonials or endorsements. Additionally, advisers should conduct due diligence on third-party rating methodologies, maintain required written agreements with compensated promoters, verify promoter eligibility and avoid relying on hyperlinks or small print for mandated disclosures.

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