REGULATORY ALERT

# SEC Publishes Risk Alert on Marketing Rule Violations Related to Testimonials, Endorsements, and Third-Party Ratings

On December 16th, 2025, the SEC's Division of Examinations (the "Division") released a Risk Alert detailing common deficiencies related to Testimonials[1], Endorsements, and Third-Party Ratings that the Division has observed since the adoption of amended Rule 206(4)-1 (the "Marketing Rule") in 2022.

## A. Testimonials and Endorsements

The Division observed the following deficiencies regarding Testimonials and Endorsements:

- Clear and Prominent Disclosures. Failure to provide the appropriate disclosures at the time the Testimonial or Endorsement was disseminated was the most common reason for non-compliance. In some instances, the required disclosures were provided, but not made in a "Clear and Prominent" manner.
- Disclosure of Material Terms of Compensation Arrangements. Advisers failed to disclose the material terms of compensation arrangements. The staff also observed advisers providing generic disclosures about compensation arrangements that omitted certain material information. The Division specifically highlighted instances of these prescribed disclosures being presented only via a hyperlink (expressly prohibited in the Marketing Rule Adopting Release, even though it is permissible for disclaimers generally), or in a smaller and/or lighter-colored font than the Testimonial/Endorsement.[2]
- Disclosure of Material Conflicts. Advisers failed to disclose material conflicts resulting from the advisers' relationships with promoters and/or the compensation arrangements for the Testimonials or Endorsements. For example, advisers did not disclose material conflicts resulting from promoters having financial interests in the adviser.

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[1] "Testimonials," "Endorsements" and "Third-Party Rankings" are defined in the "Marketing Rule Adopting Release," available here: "https://www.sec.gov/files/rules/final/2020/ia-5653.pdf"

[2] This clarifies the "Clear and Prominent" standard which requires disclosure within the Testimonial/Endorsement (i.e., on the same slide or page), and at least the same size and color font as the Testimonial/Endorsement.

[3] If an adviser does not provide the required disclosures itself, the adviser must reasonably believe that the promoter discloses the required information ("reasonable basis for belief requirement"). To have a reasonable basis for belief, an adviser may provide the required disclosures to a promoter and seek to confirm that the promoter provides those disclosures to investors.

[4] 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 (or the equivalent value in non-cash compensation) during the preceding 12 months."

- Oversight and Compliance. Advisers failed to demonstrate that they had a reasonable basis for believing that the Testimonials or Endorsements complied with the Testimonials and Endorsements Provisions[3] and written agreements with paid promoters. For example, advisers claimed the agreement 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.[4]
- Ineligible Persons. Advisers compensated ineligible persons when the advisers knew, or in the exercise of reasonable care should have known, that the promoters were ineligible persons when the Testimonials or Endorsements were disseminated.
- Promoter Affiliated with the Adviser. Advisers retained promoters affiliated with the adviser that did not meet the conditions required to be exempt from the disclosure and written agreement requirements available to Testimonials or Endorsements by certain individuals associated with the adviser. For example, the affiliations were disclosed when the prospective clients or investors were introduced to the advisers and not when the Testimonial or Endorsement was disseminated.

The Division emphasized that certain prescribed disclosures must accompany all Testimonials and Endorsements such as, but not limited to:

- Whether or not the promoter is a current client or investor (What is the promoter's relationship to you?)
- The nature and material terms of any direct or indirect compensation (Was the promoter paid? How much and under what terms?)
- Any other material conflicts of interest (What factors could affect the promoter's objectivity or reasons for giving a Testimonial or Endorsement?)

B. Third-Party Ratings

Advisers failed to comply with Third-Party Ratings Provisions[5] without complying with all or some of the requirements for the use of Third-Party Ratings. The Division observed deficiencies in the following areas regarding Third-Party Ratings:

- Due Diligence. Advisers used several methods to demonstrate that Third-Party Ratings included in advertisements complied with the Third-Party Rating Provision's "Due Diligence Requirement"[6] However, some advisers did not have sufficient information to form a reasonable basis about the design or structure of questionnaires used to prepare Third-Party Ratings. Such advisers neither developed policies and procedures for satisfying the Due Diligence Requirement, nor had taken steps to meet this requirement (for example, by reviewing a copy of the materials used in preparation of the ratings).

[5] The Marketing Rule prohibits 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.
[6] The requirement to have a reasonable basis for believing that questionnaires or surveys used in the preparation of Third-Party Ratings were (i) structured to make it equally easy for a participant to provide favorable and unfavorable responses, and (ii) not designed to produce any predetermined results.

- Clear and Prominent Disclosures. Advisers included Third-Party Ratings in advertisements without:

    - Providing some or all of the required Clear and Prominent disclosures (e.g., using hyperlinks for the disclosures, using smaller text font for disclosures, and placing the disclosures at the bottom of the website pages away from the actual ratings).
    - Clearly and prominently identifying the date on which the ratings were given and the period of time upon which the ratings were based.
    - When using a Third-Party Rating logo, clearly and prominently identifying the third party that created and tabulated the ratings.
    - Including the required disclosures regarding direct or indirect compensation in connection with obtaining or using Third-Party Ratings. For example, the adviser did not disclose payments that were made for: (1) the use of the Third-Party Rating providers' logos or reprints of the ratings; and/or (2) the advisers' priority placement in the Third-Party Rating providers' advertisements or for upgraded or enhanced exposure.

C. Optima's Take

The overarching principle for investment advisers who currently use or plan to use Testimonials, Endorsements, or Third-Party Ratings in their marketing materials is transparency. Firms should have clear, enforceable, and auditable policies and procedures for ensuring such transparency.

This Risk Alert clearly signals that, while the SEC under Paul Atkins may have slowed its roll of Gensler-era rulemaking, the Commission continues to enforce tentpole rules already in place, with a strong emphasis on disclosure and investor protection.

If you have any questions, or wish to learn more about how Optima Partners can help, please reach out to info@optima-partners.com.