



Don't Run Afoul of the All-or-Nothing Requirement of the SEC's New Marketing Rule

Many investment advisers eagerly await the new opportunities created by the SEC's New Marketing Rule. With a mandatory effective date of November 4, 2022, many advisers have begun to take steps to explore how they can change their marketing efforts today.

To this end, an overwhelming number of advisers have asked us if they can begin to comply with aspects of the 430-page rule on its May 4, 2021, effective date. We find that many advisers want to seize on the advertising potential created by the amended rule's newly permitted use of testimonials, but they don't want to deal with the rest of it until they've finalized their new marketing plans to fit the rule.

All or Nothing

The simple answer is that firms can't cherry pick parts of the rule, such as the ability to use testimonials, and ignore other parts such as those dealing with performance advertising and solicitation. The SEC wants to avoid the potential hazards of a piecemeal approach by mandating that advisers comply with all aspects of the amended rule, not just a few at a time. See the SEC's FAQs [here](#).

Firms that stand to benefit most from the most comprehensive changes in the SEC's oversight of adviser marketing since 1961 are those that perform a thorough review of the entire rule and, in turn, how the rule can help the firm market its services. Only then can a firm make a proper timeline to adjust to all aspects of the rule, establish relevant policies and procedures, and train staff.

It's easy to understand why advisers are excited about the ability to use testimonials for the first time to help promote their business. Never before have clients and prospective clients been able to go online and read reviews of financial advisers. The rule will help advisers who provide true value for clients bolster their marketing efforts by showcasing great experiences from those they have worked with.

But the SEC wants advisers to document any request for client testimonials. As an example, you can't ask your former college roommate or distant cousin for a few kind words. Instead, an emerging best practice would be for an adviser to send an email to all clients and request feedback. The litmus test the SEC is looking for is whether you made it possible for all clients to send comments, positive or not.

A Word About Recordkeeping

The rule replaces decades of no-action letters from SEC staff that formed the general regulatory parameters for adviser marketing. While it doesn't specifically address social media, the rule does have requirements for online advertising.

And although there is no longer a preapproval process required for ads, the SEC expects firms to have robust policies and procedures in place when it comes to rule compliance.

Advisers must be mindful of the fact they are required to keep books and records - including all processes, policies, and procedures - for the previous five years. That means keeping all records under the old rule in addition to keeping books and records that will fall under the new rule.

The SEC's new marketing rule is a game changer. Let the specialists at Core Compliance & Legal Services help your firm develop policies and procedures to fit your firm's specific needs. To schedule a consultation, contact us at (619) 278-0020 or visit us online at corecls.com.