SEC Proposes Changes to the Advertising and Cash Solicitation Rules for Investment Advisers

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On November 4, the Securities and Exchange Commission announced that it voted to propose amendments to modernize the rules under the Investment Advisers Act of 1940 (Advisers Act) addressing investment adviser advertisements and payments to solicitors. According to the SEC, the “proposed amendments to the advertising rule (Rule 206(4)-1 under the Advisers Act) would replace the current rule’s broadly drawn limitations with principles-based provisions,” and would permit the use of testimonials, endorsements and third-party ratings, subject to certain conditions. The proposed rule also would include tailored requirements for the presentation of performance results based on an advertisement’s intended audience.

The SEC also proposed amendments to the cash solicitation rules under the Advisers Act. The proposed amendments to Rule 206(4)-3 would expand the current rule to cover solicitation arrangements involving all forms of compensation, rather than only cash, subject to a new *de minimis* standard. Non-cash compensation would include directed brokerage, awards or other prizes and free or discounted services. Importantly, the proposed rule would apply to the solicitation of current and prospective investors in private funds, rather than only to the solicitation of current and prospective clients of the adviser.

The proposed amendments are published on the SEC’s website and will be in the *Federal Register*. The public comment period will remain open for 60 days after publication in the *Federal Register*.

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