

First SEC Enforcement Action Arising Out of the New Marketing Rule Targets Fintech Investment Advisor Titan Global Management

Article By:

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Effective in 2022, the SEC adopted a new Marketing Rule for investment advisers to modernize the regulation of investment adviser advertising and solicitation practices. The adoption of the new Marketing Rule was the first substantive amendment to Rule 206(4)-1 under the Investment Advisers Act of 1940 since its adoption in 1961. A discussion of the impact of the new Marketing Rule can be found [here](#).

On 21 August 2023, less than one year since its effective date, the SEC announced the settlement of the first enforcement action arising out of the Marketing Rule, penalizing fintech adviser Titan Global Capital Management (Titan) US\$850,000 in civil penalties (plus prejudgment interest and disgorgement) for violations of the rule. Specifically, the SEC order announcing the penalties stated that Titan had violated the Marketing Rule by [\(1\) advertising hypothetical performance without having adopted and implemented policies and procedures reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of the intended audience and by failing to provide information and assumptions underlying the hypothetical performance advertised, and \(2\) making misleading statements about hypothetical performance metrics in its advertisements. In particular, the SEC charged that Titan advertised its Crypto strategy on its website with a 2700% annualized return figure without clearly disclosing that such a return had been extrapolated from a three week period and that it was based on an hypothetical account with no actual trading. Although Titan included some embedded links labeled as “Disclosures” or “Track record” in the fine print, such efforts were deemed insufficient by the SEC to notify potential investors of the risks.](#)

Interestingly, in an indication of the SEC’s focus on investment adviser’s operating complex investment strategies, such as the Crypto strategy, the SEC also found that Titan had committed additional Marketing Rule violations related to the Crypto strategy, including that Titan (1) made conflicting disclosures about how client “crypto” assets were custodied, and (2) failing to adopt policies and procedures concerning employee personal trading in “crypto” assets despite disclosure to the contrary.

Many have noted that with this enforcement action, the SEC is putting industry on notice that it intends to scrutinize investment adviser advertising closely and to enforce compliance with the new

Marketing Rule strictly.

The SEC's order, which discusses certain other violations, can be found [here](#).

Josh Durham, law clerk, also contributed to this article.

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