

SEC Risk Alert Offers Initial Observations on Compliance

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On 17 April 2024, the Securities and Exchange Commission (SEC) Division of Examinations issued a [risk alert](#) entitled “Initial Observations Regarding Marketing Rule Compliance” (the Alert). The Alert reflected the SEC examination staff’s preliminary observations coming from its examination program and noted that compliance with Rule 206(4)-1 (the Marketing Rule) continues to be a priority for the SEC staff.

While the Alert provided some insight into how the SEC staff is viewing compliance obligations under the Marketing Rule, the utility of the Alert was somewhat muted owing to the nature of the conduct observed by SEC staff, much of which would have been problematic prior to the adoption of the Marketing Rule. For example, the staff made the following observations (among others):

- Policies and procedures that were informal rather than in writing;
- Policies and procedures that were not implemented (e.g., policies required net of fee performance presentation, but advertisements included only gross of fee performance); and
- Advertisements that:
 - stated the advisers were “free of all conflicts” when, in fact, the adviser faced conflicts of interest;
 - publicized the receipt of awards that were not actually received;
 - noted the adviser was “seen on” national media, when, in fact, the only adviser’s only appearances were paid advertisements;
 - presented performance of products that were no longer available;
 - noted that clients were serviced by a team of professionals when only one person was responsible for servicing clients; and
 - included disclosures in an unreadable font.

That said, the Alert underscores that the SEC examination staff continues to review adviser advertisements closely, and that advisers should review their implementation of their Marketing Rule compliance programs to ensure that the scope of their advertisements are covered and compliant.

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