Background

Rule 206(4)-1 under the Advisers Act prohibits certain types of advertisements, including any advertisement that contains any untrue statement of material fact, or that is otherwise false or misleading. Additionally, the Advisers Act's broad anti-fraud provisions apply to all written correspondence; even items that are excluded from the definition of an advertisement must not contain any false or misleading statements.

Effective May 5th, 2021, the Securities and Exchange Commission implemented reforms under the Investment Advisers Act to modernize rules that govern investment adviser advertisements and payments to solicitors. The amendments create a single rule that replaces the current advertising and cash solicitation rules. While general prohibitions are still in place, such as using misleading or untrue statements and omitting material facts, the use of testimonials and endorsements will be allowed, with certain disclosure and oversight requirements.

As with all advertisements, any use of testimonials must be submitted to compliance for review and approval prior to use.

TESTIMONIALS

Testimonials, Endorsements and Solicitations. "Advertisement" includes any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly. A testimonial includes any statement, written or oral, by a current client about the client's experience with the Company or its supervised persons. An endorsement includes any statement, written or oral, by a person *other than a current client* that indicates approval, support, or recommendation of the Company or its supervised persons, or describes that person's experience with the Company or its supervised persons. Testimonials and endorsements also include solicitation and referral activities, including statements that directly or indirectly solicit any investor to be the Company's client, or refers any investor to be the Company's client. Lists of clients or investors may be presented if the basis for inclusion and exclusion is independent of performance and is fully disclosed in the advertisement, which also presents a warning to the effect that inclusion of the list does not necessarily mean that the listed clients are satisfied with the investment adviser's services. Merely permitting the use of the "like", "share", or "endorse" feature on a third-party website or social media platform is not considered a testimonial or endorsement.

Examples of activities likely to be deemed an endorsement or testimonial include the following:

- Websites of lead-generating firms or adviser referral networks (endorsement);
- A blogger's website review of an adviser's services (endorsement or testimonial);
- A lawyer or other service provider that refers an investor to an adviser, even infrequently (endorsement or testimonial); and,
- Solicitor arrangements previously made under Advisers Act Rule 206(4)-3, the "Cash Payments for Client Solicitations Rule").

Examples of activities that are likely not deemed to be an endorsement or testimonial include the following:

- A third-party marketing service or news publication that prepares content for the adviser or disseminates content (such as an adviser newsletter); or,
- A company that provides a list containing the names and contact information of prospective investors.

Third-Party Attribution. In addition to "advertisements" directed by the Company, the Company shall also be responsible for "advertisements" directed by a third-party if the Company (or a related person) participates in the communication. Whether information posted or published by third parties is attributable to an adviser requires an analysis of the facts and circumstances to determine (i) whether the

adviser has explicitly or implicitly endorsed or approved the information after its publication (adoption) or (ii) the extent to which the adviser has involved itself in the preparation of the information (entanglement). At a minimum, the following factors should be considered by the Company when assessing whether it has participated in a third-party "advertisement":

- Was the Company involved in creating or disseminating the advertisement (entanglement)?
- Did the Company authorize the communication?
- Did the Company provide the material to third-party for dissemination?
- Did the Company endorse the material after publication (adoption)?
- Are the materials collaborative (ex. fund of funds, 3rd party models)?
- Did the Company selectively delete, alter, or endorse comments on a third parties' content on the Company's social media platform(s)?

Under SEC Rule 206(4)-1 testimonials and endorsements are permitted as long as they adhere to certain guidelines including satisfying certain disclosure, oversight, and disqualification provisions. Any testimonials/ endorsements must still abide by general advertising regulations in that they cannot be misleading, untrue, or fictitious, and use of performance information in testimonials/ endorsements is prohibited.

All testimonials used in advertising must be received in writing and maintained in a Testimonial file (can be physical or electronic), and they must be approved by Compliance prior to use (as with any marketing material).

Any testimonials and endorsements must also be clearly and prominently accompanied by the following disclosures:

1. whether the testimonial or endorsement was given by a current client or not,

2. an explanation of any compensation (cash or non-cash including reduced advisory fees and/ or gifts) if applicable.

3. a brief explanation of any material conflicts of interest due to the relationship between the person providing the testimonial/ endorsement and the IAR.

4. The rule prohibits certain "bad actors" from acting as promoters, including promoters that have been subject to regulatory events or felony criminal actions.

If the person providing the testimonial or endorsement is being compensated (whether cash or non-cash) at a value of **more than $1,000** within a 12-month period, this is subject to additional requirements and disclosures. Any promoters being compensated at a value of more than $1,000 per year require Compliance Department review and approval prior to being used.

TESTIMONIAL DISCLOSURES

Clear and Prominent Disclosures. In order to utilize testimonials or endorsements in advertising, the Company must at the time the testimonial or endorsement is disseminated, provide clear and prominent disclosure that:

1. Indicates the testimonial was given by a current client or the endorsement was given by someone other than a current client;
2. Indicates that compensation was provided for the testimonial or endorsement, if applicable, and
3. Includes a brief statement regarding any conflicts of interest on the part of the person giving the testimonial or endorsement resulting from that person's relationship with the

Company.

Clear and prominent means that the above disclosure must be included within the body of the material for written communications, and may be presented in written format or orally in connection with an oral testimonial or endorsement.

Additional Disclosures. In addition to the above clear and prominent disclosures, the Company must disclose at the time the testimonial or endorsement is disseminated:

i) the material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and

ii) a description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.

Reliance on 3rd Party. The Company may rely on the person giving the testimonial or endorsement to provide the above required disclosures, provided the Company has a reasonable basis for believing that the disclosures are being provided in compliance with this section.

Compensated Testimonials and Endorsements. The Company may provide cash or non-cash compensation to a person providing a testimonial or endorsement (a "promoter"), provided the following conditions are met:

Written Agreement. The Company must maintain a written agreement with any person giving a testimonial or endorsement for compensation. The written agreement must describe the scope of the agreed-upon activities and the terms of compensation for those activities.

Disqualification. The Company may not compensate an individual who would otherwise be deemed an ineligible person with a disqualifying action or event under federal securities laws. Disqualifying actions and events include, but are not limited to an SEC opinion or order barring, suspending, or prohibiting the person from acting in any capacity under the federal securities laws and certain convictions, orders, and legal proceedings described in Section 203(e) of the Advisers Act.

De Minimis Exemption. If the cash or non-cash compensation is valued at less than $1,000 per 12-month period, a written agreement is not required and the disqualification provision described above does not apply. In order to determine whether the de minimis exemption has been exceeded (at least $1,000 in any 12-month period), the Company must maintain records of any amount of compensation paid to a promoter, including the value of non-cash compensation.

The following disclosures must be used clearly and prominently with any use of testimonials. The disclosure language is required to be shown in the same font size as the rest of the draft.
The following 3 items must be disclosed.

1. If the testimonial or endorsement provided is from a current client or not. Do not list any personal identifying information of a client without their consent. Client initials or first names and last initial may be used provided the promoter has given permission to include.

   Current actual client of (insert advisor DBA name)
   OR
   Not a current client of (insert advisor DBA name)

2. If the person providing the testimonial was compensated (cash or non-cash):

   Compensation was provided in the form of (insert details regarding compensation)

3. If any conflicts of interest exist due to the relationship between the person providing the testimonial/ endorsement and the advisor

   (Briefly describe the conflict of interest/ relationship)

Registration Requirements.
Notwithstanding the above, some state rules and regulations require persons receiving compensation for client referrals to be registered as investment advisers or Investment Adviser Representatives (IARs). The Company will ensure that any person (individual or entity) acting as a solicitor is properly registered as an IAR of the Company or investment adviser prior to receiving compensation for client referrals, if required.

THIRD PARTY RATINGS OR MEMBERSHIPS

Using certain designations, awards or memberships from a third party in advertising requires that the adviser has a reasonable basis for believing that any questionnaire or survey used in the preparation of such ratings is designed so it is equally easy for participants to provide favorable and unfavorable responses, and is not designed to produce a predetermined result. Any use of an award or membership in advertising must clearly and prominently include the following:

1. The date on which the rating was given and the period of time upon which the rating was based;

2. The identity of the third party that created and tabulated the rating;

3. The criteria for the receipt of such accolade; and

4. If applicable, that compensation has been provided directly or indirectly by the IAR in connection with obtaining or using the third party rating.

Non-descriptive awards may **not** be used.

GENERAL PROHIBITIONS

The following advertising practices are strictly prohibited:

It is the SEC's view that an advertisement containing performance information may be misleading in violation of Rule 206(4) under the Advisers Act depending on the facts and circumstances of the advertisement. Performance Advertisements may not include or exclude performance, or present performance time periods, in an unfair or unbalanced manner. In addition, the Company may not include in any advertisement:

- Any presentation of gross performance, unless the advertisement also presents with at least equal prominence net performance calculated over the same time period and using the same type of return and methodology as gross performance.
- Performance results of any portfolio or composite aggregation of related portfolios, other than private funds, unless they are provided for prescribed 1, 5 , and 10-year time periods.
- Any statement that the SEC has approved or reviewed any calculation or presentation of performance returns.
- Performance results from fewer than all related portfolios (portfolios with substantially similar investment policies, objectives, and strategies), except that related portfolios may be excluded if: (i) the advertised performance results are not materially higher than if all related portfolios had been included, and (ii) the exclusion of any related portfolio does not alter the presentation of any prescribed time periods.

- Performance results of a subset of investments extracted from a portfolio, unless the advertisement provides, or offers to provide promptly, the returns of the total portfolio,
- Hypothetical performance, unless the Company follows the policies and procedures described below, which are designed to ensure that the performance is relevant to the likely financial situation and investment objectives of the intended audience and the Company provides sufficient information regarding the hypothetical performance to enable the intended audience to understand the criteria used, assumptions made, and risks and limitations of the hypothetical performance.
- Predecessor performance, unless there is appropriate similarity between the personnel and accounts at the predecessor adviser and the personnel and accounts at the Company.