

# Key Components Of The New SEC Advertising Rule

## The 2 “Prongs” Of RIA Advertising (What Is An “Advertisement”?)

**1** Any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or offers new investment advisory services with regard to securities to current clients.

**2** Any testimonial or endorsement for which an investment adviser provides direct or indirect compensation (i.e., what was previously covered by the cash solicitation rule).

## The 7 (General) Violations To Avoid With RIA Advertising Compliance

An adviser may not:

- 1** | Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;
- 2** | Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the SEC;
- 3** | Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;
- 4** | Discuss any potential benefits to clients or investors connected with or resulting from the investment

adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;

- 5** | Include a reference to specific investment advice provided by the investment adviser where such investment advice is not presented in a manner that is fair and balanced;
- 6** | Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or
- 7** | Otherwise be materially misleading

## The 3 Conditions For Using Testimonials & Endorsements

**1** Advisers must either make all five required disclosures (below) themselves, or must “reasonably believe” that the person giving the testimonial or endorsement makes all five disclosures (if the RIA is using a promoter).

**2** Advisers must have a “reasonable basis for believing that any testimonial or endorsement complies with the requirements of the rule.” If the (non-affiliated) promoter is to be paid more than de minimis compensation for the testimonial or endorsement, the adviser must additionally sign a written agreement with such promoter that “describes the scope of the agreed upon activities and the terms of the compensation for those activities.”

**3** Advisers may not compensate “ineligible persons” (e.g., those previously sanctioned under Federal securities laws) who provide testimonials and endorsements.

## The 5 Required Disclosures For An RIA Promoter Providing A Testimonial Or Endorsement

Must be disclosed “clearly and prominently”

Additional required disclosures

- 1** | If the testimonial was given by a current client, or that the endorsement was given by a person other than a current client.
- 2** | If cash or non-cash compensation was provided for the testimonial or endorsement.
- 3** | A brief statement of any material conflicts of interest on the part of the promoter resulting from the adviser's relationship with such promoter.

- 4** | The material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the promoter for the testimonial or endorsement.
- 5** | A description of any material conflicts of interest on the part of the promoter resulting from the adviser's relationship with such promoter and/or any compensation arrangement.