



Testing Your Marketing Policy

March 6, 2024

Your firm's new Marketing Policy has been in place for nearly a year and a half and by now your marketing and client communications teams have hopefully settled into new procedures. Like most advisers' Compliance teams, you or your team likely have reviewed and approved all or most of your advertisements to ensure compliance with the new rules. Therefore, you may be feeling like additional compliance testing of the Marketing Policy isn't necessary. As you carry out or plan your annual review procedures, below we offer some suggestions on tests to consider that cover aspects of your Marketing Policy and compliance with the Marketing Rule (Rule 206(4)-1) that go beyond the content of advertisements.

- Substantiating Material Facts - Review supporting documentation that substantiates material facts included in a sample of advertisements. Support should be maintained in the firm's files or marketing review system in a manner that allows for timely retrieval if requested during an SEC exam.
- Third-Party Promoter Agreements – For a sample of third-party Promoters, ensure a written agreement is in place (if applicable) and the terms of the agreement comply with your Marketing Policy.
- Endorsement Disclosures – If your agreements with third-party Promoters require the Promoter to deliver required endorsement disclosures to prospective clients/investors, ask the Promoter to provide you their records/evidence related to delivery of such disclosures for a sample of prospects.
- Testimonial/Endorsement Misconduct Disqualification – Test procedures performed by the firm to obtain comfort that Promoters (both affiliated and third-party) are not disqualified from being compensated for testimonial/endorsement activity under Rule 206(4)-1(b)(3). If such procedures require periodic attestations/representations from affiliated and/or third-party Promoters, review a sample of the attestations/representations.
- Third-Party Ratings - Review documentation supporting procedures performed by the firm to obtain a reasonable basis for believing the questionnaire or survey used in preparation of the third-party rating(s) made it equally easy for the participant to provide favorable or unfavorable responses and was not designed to produce a predetermined result.

- Pre-Approval - If your Marketing Policy requires advertisements to be reviewed by members of your firm beyond your core Compliance team, review evidence of timely approval by these additional team members.
- Performance Calculations – Ask your performance team to provide more detail on how they are calculating gross and net performance to ensure the calculation is consistent with those definitions in the rule.
- Predecessor Performance – If your firm utilizes predecessor performance, revisit the conditions for use of predecessor performance in 206(4)-1(d)(7) to ensure its continued use is appropriate.
- Business-Use Website/Social Media – If your firm is not utilizing software or other procedures to monitor firm-branded and other business-use social media or websites on a regular basis, review these websites or social media pages to ensure content complies with Marketing Rule requirements and requirements of the Marketing Policy, such as pre-approval.
- Required Records – Review how your firm is organizing and maintaining required records relevant to the Marketing Rule. Required records that firms may be overlooking include a record of the “intended audience” when: (a) an advertisement includes hypothetical performance; or (b) when net performance is calculated with the use of a model fee that is equal to the highest fee charged to the intended audience.

As always, let us know if you have any questions or if we can be of any assistance please contact Laura Rauman at (414) 935-6361 or lrauman@vista360llc.com, Dan Weitzel at (414) 935-6364 or dweitzel@vista360llc.com or a member of your [Vista360 Consulting Team](#).