

Regulatory and Enforcement Alert

SEC Adopts Significant Amendments to Investment Adviser Marketing Regulations

December 23, 2020

Yesterday, the SEC [voted](#) to replace the existing advertising and solicitation rules with a new consolidated rule that is designed to comprehensively and efficiently regulate registered investment advisers' marketing communications. The amendments have important practical implications for registered investment advisers that sponsor private funds. We will explore these in greater detail in an [in-depth analysis](#) we will publish in February. In the meantime, we have summarized a few high-level takeaways to bear in mind.

Overall, the amendments present a mix of good news and bad news for private fund sponsors:

The Good News

- Sponsors will have more flexibility to present testimonials and past specific recommendations in their marketing materials (subject to certain limitations and conditions).
- Sponsors also stand to benefit from the simplicity of having the marketing regulatory framework consolidated into a single rule and adopting release (the current framework lives in a patchwork of SEC staff no-action letters and other guidance that interpret and apply the existing advertising and solicitation rules).
- In a positive move for fund sponsors, the SEC opted to back away from its proposal to expand the "advertisement" definition to include one-on-one communications that seek to obtain or retain private fund investors. The amended definition does not cover one-on-one communications to prospective or current private fund investors.
- The SEC abandoned its proposal to require advisers to have advertisements pre-approved by a designated employee prior to dissemination.
- The SEC is providing an 18-month compliance period, giving the industry time to work through the implications of the amendments.

The Bad News

- New prescriptive requirements will apply to the presentation of targeted and projected performance and third-party ratings in advertisements.

- For each material statement of fact made in a marketing material, a sponsor will need to have a reasonable basis for believing that it can substantiate the statement upon SEC demand, resulting in increased documentation and record-keeping burdens.
- The rule imposes new requirements on private fund placement agent arrangements.

The SEC also adopted related amendments to Advisers Act recordkeeping requirements and Form ADV. The amendments will become effective in the second quarter of 2021—60 days after their publication in the Federal Register. However, as noted above, registered investment advisers will have an 18-month transition period to begin to comply with the requirements of the amended rule.

For further information about this Alert, please contact one of the following:

NEW YORK CITY

Nicholas S. Goldin

+1-212-455-3685
ngoldin@stblaw.com

Michael J. Osnato, Jr.

+1-212-455-3252
michael.osnato@stblaw.com

Michael W. Wolitzer

+1-212-455-7440
mwolitzer@stblaw.com

Allison Scher Bernbach

+1-212-455-3833
allison.bernbach@stblaw.com

Meredith J. Abrams

+1-212-455-3095
meredith.abrams@stblaw.com

Manny M. Halberstam

+1-212-455-2388
manny.halberstam@stblaw.com

Vanessa K. Rakel

+1-212-455-3534
vanessa.rakel@stblaw.com

WASHINGTON, D.C.

David W. Blass

+1-202-636-5863
david.blass@stblaw.com

Meaghan A. Kelly

+1-202-636-5542
mkelly@stblaw.com

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