

INSIGHTS

OCIE Releases Risk Alert Regarding Advertisements of Investment Advisers

October 3, 2017

On September 14, 2017, OCIE published a Risk Alert identifying issues associated with Rule 206(4)(1) of the Investment Advisers Act of 1940 (the “Advertising Rule”).¹ The Risk Alert was based on observations of the OCIE staff after over 1,000 adviser examinations, including 70 examinations pursuant to the 2016 Touting Initiative which focused on the use of accolades in advisers’ marketing materials and highlighted common deficiencies in advisers’ advertising practices.

With regard to the Touting Initiative, the OCIE staff identified three common deficiencies in advisers’ advertising materials when advisers tout awards, promote rankings and/or identify professional designations: (1) misleading use of third-party rankings and awards without disclosing material facts about such rankings or awards (2) misleading use of profession designations; and (3) prohibited use of client testimonials.

In addition, the OCIE staff identified the following six areas as the most common Advertising Rule compliance deficiencies:

Misleading Performance Results: the OCIE staff found that advisers presented results without deducting advisory fees or published advertisements that contain hypothetical or back-tested performance results;

Misleading One-on-One Presentations: the OCIE staff observed presentations that advertised performance results (gross of fees) but did not include potentially relevant disclosures and presentations that did not disclose that the advertised performance results did not reflect the deduction of advisory fees and that client returns would be reduced by such fees and other expenses;

Misleading Claim of Compliance with Voluntary Performance Standards: the OCIE staff identified advertisements that contained misleading claims of compliance with voluntary performance standards, including claims that performance results complied with a certain voluntary performance standard, when it was not clear that the performance results in fact adhered to the performance standard’s guidelines;

Cherry-Picked Profitable Stock Selections: the OCIE staff found that some advisers utilized materials that cherry-picked past profitable performance, or included some but not all recommendations in order to illustrate a particular investment strategy;

Misleading Selection of Recommendations: the OCIE staff observed advertisements that contain misleading statements because they included only certain, and not all, recommendations, in order to illustrate a particular investment strategy; and

Compliance Policies and Procedures: the OCIE staff identified that many advisers lacked compliance policies and procedures reasonably designed to prevent deficient advertising practices, including policies related to how to appropriately conduct reviews and approvals of advertising materials prior to distribution.

The Risk Alert highlights the issues associated with complying with the Advertising Rule. Accordingly, advisers should coordinate with counsel to ensure that they have implemented robust, tailored policies and procedures to comply with the Advertising Rule and update their compliance programs as needed. Should you require additional information please contact Cheri Hoff at (212) 508-6175 or Glen Kopp at (212) 508-6123.

¹ The Risk Alert is available [here](#).