Summary of Initial Observations by the SEC Division of Examinations Staff Regarding Marketing Rule Compliance

Rules	Relevant Requirements	Observed Deficiencies
Compliance Rule (Rule 206(4)-7)	*Adopt and implement written policies and procedures reasonably designed to prevent compliance violations*	Advisers' policies and procedures not reasonably designed or implemented to address compliance with the Marketing Rule, including policies and procedures that: • Only provided general descriptions and expectations related to the Marketing Rule • Did not address applicable marketing channels utilized by the advisers (*e.g.*, websites, social media) • Were not memorialized in writing • Were incomplete, not updated, or only partially updated • Were not tailored to advisers' specific advertisements • Inadequately addressed the preservation and maintenance of advertisements and related documents (*e.g.*, copies of questionnaires or surveys used to prepare third-party ratings included in advertisements) • Were not implemented (*e.g.*, policies that required the use of net of fees performance and advisers only including gross performance in advertisements)
Books and Records Rule (Rule 204-2)	*Make and keep true, accurate and current books and records relating to the investment advisory business*	Advisers failed to maintain: • Copies of questionnaires or surveys used to prepare third-party ratings • Copies of information posted to social media • Supporting documentation for performance information included in advertisements
Form ADV	*Update Form ADV, including Part 1A, Item 5.L and Part 2A, Item 14 brochure disclosures, when applicable, both related to advertising*	Advisers inaccurately reported on Form ADV that advertisements did not include: • Third-party ratings, when websites or social media posts included third-party ratings • Performance results, when performance results were included in marketing materials • Hypothetical performance, when hypothetical performance was included in advertisements Form ADVs included outdated references to the Cash Solicitation Rule (Advisers Act Rule 206(4)-3), inaccurately indicating that advisers did not have referral arrangements, and consequently also omitting material terms and compensation associated with such arrangements.
Marketing Rule's "General Prohibitions" (Rule 206(4)-1)	*An advertisement may not:* • *include any untrue statement of a material fact,* • *be misleading, or* • *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*	Advertisements: • Stated that the advisers were "free of all conflicts," when conflicts existed • Included inaccuracies about the advisers' business (*e.g.*, stating that a network of personnel provided services when it was a sole individual, inaccurate statements about personnel qualifications) • Provided inaccurate descriptions of material facts about advisory services or products offered (*e.g.*, referencing investment mandates that were not used, maintaining that professional institutions validated firm investment processes when they had not been validated, stating that the adviser considered certain risk tolerances when recommending

		investment strategies when they were not considered, referring to a list of approved securities and securities screening processes that did not exist, misrepresenting the advisers' client base (*e.g.*, a firm that did not advise private funds described itself as a "private fund adviser")) • Claimed to have received certain awards that were not received
	• *An advertisement may not 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 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*	Advertisements: • Claimed that an adviser was different from other advisers because it acted in the "best interest of clients" without also disclosing that all advisers have a fiduciary duty to their clients • Recommended investments without disclosing relevant conflicts of interests (*e.g.*, compensation paid to or received by the advisers) • Included untrue or misleading statements (*e.g.*, stating the advisers were "seen in" national media when the "appearances" were paid advertisements, implying that celebrities endorsed the advisers when there was no such endorsement) • Contained untrue or misleading claims about performance (*e.g.*, advertising profits that advisers considered unachievable, providing inadequate disclosure about the share classes included in the returns, using lower fees than were offered to the intended audience in calculations for net of fees performance returns, omitting material information about fees and expenses used in calculating returns) • Referred to SEC registration (beyond registration status) to imply that registration represented a certain level of skill or ability, the SEC approved or passed on the business practices of the adviser, or used the SEC logo on websites to imply approval or endorsement by the SEC • Contained third-party ratings to imply that the advisers were the only recipients of awards when the awards went to multiple recipients or the advisers were not the top recipients and indicated that the advisers were highly rated without disclosing that the methodologies for the ratings were based on factors unrelated to the quality of investment advice (*e.g.*, assets under management, number of clients, adviser personnel nominated employees for awards) • Included misleading testimonials (*e.g.*, displaying testimonials without providing the context of the testimonials) • Included misleading performance information (*e.g.*, benchmark index comparisons without defining the index or providing sufficient context or disclosure, presentations included outdated market data or products no longer available to clients and lower investment costs than were offered, providing track record with securities that were not purchased by the advisers in a similar manner in client accounts, claiming that the advisers achieved above average results when the advisers did not have clients or track records, providing performance information without disclosures)

	An advertisement may not 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	• Advertisements included statements about potential benefits associated with advisers' services or methods of operation while not providing fair and balanced disclosures of material risks or limitations of these benefits (*e.g.*, advertisements on social media that included performance information did not disclose the material risks and limitations associated with the potential benefits)
	An advertisement may not 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	• Advertisements that cherry-picked the most profitable investments or excluded certain investments without sufficient context or information to evaluate the justification (*e.g.*, investments written off as a loss, lower-performing investments) • Advisers did not establish criteria in their policies and procedures to provide information about investment advice in a fair and balanced manner
	An advertisement may not include or exclude performance results or time periods in manners that are not fair and balanced	Advertisements: • Did not disclose the time period or whether the returns were calculated for the same time period as performance information • Included or excluded certain performance results in a way that was not fair and balanced (*e.g.*, including the performance of only realized investment information in the total net return and excluding unrealized investments)
	An advertisement must not otherwise be materially misleading	• Disclosures in advertisements in unreadable font on websites or in videos