

# New Marketing Rules: What CCOs Need To Do Now



In December 2020, the SEC announced the first substantive overhaul to Rule 206(4)-1 under the Investment Advisors Act in nearly 60 years.

It makes sense — a lot has changed since the 1960s. The new SEC marketing rules reflect the realities of how integrated digital marketing strategies allow us to engage with consumers.

The SEC finalized the rules on December 4, 2020, but they provided a compliance grace period for advisors. The SEC begins fully enforcing these new standards on **November 4, 2022**.

Are your firm's policies and procedures in line with the SEC's new marketing expectations? CCOs should take these actions today to ensure they are.

## Get To Know the New Rules

The new marketing rules change everything, including the very definition of the word advertising.

According to the SEC, "The amended definition of 'advertisement' contains two prongs: one that captures communications traditionally covered by the advertising rule and another that governs solicitation activities previously covered by the cash solicitation rule."

That first prong includes any direct or indirect communication from an advisor that's offering investment advisory services to a client or prospect. Your email

newsletter, social media posts, or blog content may fall under this umbrella. One-to-one communications are excluded, so personal emails or phone calls are not advertising.

The second prong focuses on compensated testimonials. It's important to note that compensation need not be in the form of cash. If you offer a prize or reduced advisory fee—any sort of financial incentive—in exchange for a testimonial, it is considered compensation.

In terms of limitations, the SEC's new marketing rules hold firms accountable for:

- **Making false statements**, including statements that are false by omission or that cannot be substantiated. *E.g., You cannot promise specific percentage returns to prospects.*
- **Providing an unbalanced or unfair treatment of advice, risks, or limitations.** *E.g., You cannot present actual returns for an unusually strong year as if it represents what clients can expect from future performance.*
- **Including any information that is otherwise materially misleading.** Essentially, do not overtly lie or fudge the truth. *E.g., You cannot say you have \$500 million AUM when, in fact, you only manage \$100 million.*
- **Using testimonials and endorsements only if the firm shares specific details:** Namely, the individual's relationship to the firm and whether or not they have been compensated. *E.g., If you hire Chuck Norris to advertise for your firm, you must make it clear that he is not a client and has been paid to appear in your advertising.*

For a complete look at the SEC's new marketing rules, see the SEC's press release on the updated guidelines.

## Audit Your Existing Advertising Assets

Once you've developed a comprehensive understanding of the SEC's new marketing rule, it's time to audit your existing advertising materials internally.

It's crucial to be systematic in your approach. Testimonials may be tucked away in a downloadable white paper. Perhaps you have an old blog post that shares high-

level year-end performance but omits data that are statistical outliers. Marketing materials considered out of bounds by these updated standards could be lurking anywhere across your firm's digital footprint.

This content can be overlooked easily and cause headaches if you're asked to account for your marketing materials. Build a checklist to work through all your marketing platforms so that your team can divide and conquer the internal audit process.

## **Modify Your Policies and Procedures**

In addition to reviewing your assets, you must take a second look at your policies and procedures.

The first step is updating your internal policies to reflect the new marketing rules. Ensure your core marketing policies align with the SEC's regulations. Remove any language that is ambiguous or runs counter to the new guidance. Consider incorporating the actual language from the SEC so your team can see firsthand what's expected.

Once you have revised your policies, it's time to adjust procedures to meet these new expectations. Creating checklists for your team can walk them through the new guidelines. Put guardrails in place so a second set of eyes evaluates every new piece of marketing against the SEC's rules before it goes out the door.

Leaving execution to chance is a surefire way for old habits to creep in and derail attempts to meet new rules. Make it easy for your team to comply by providing them with a clear roadmap for success.

## **Test Your Team**

Once your team has access to new policies and has received training on new procedures, it's time for them to test their knowledge.

Rather than waiting for someone to make a costly mistake in the real world, test your team in simulated situations so you're the one to catch the error.

Draft quizzes where you ask your team to identify problematic messaging in fictitious email newsletter copy. Write questions that challenge your team to think about what they'd do in a scenario where a colleague skips steps in the content development compliance checklist.

The best way to ensure real-world success is to create a safe space for your team to make mistakes. That's why tests and drills can be valuable in helping your team learn the ropes of the new rules.

## **Document Everything**

As all CCOs know, the devil is in the documentation. The SEC will not take your word regarding compliance; it expects to see clear documentation of your processes and procedures.

Part of documentation pertaining to marketing is developing a clear system for showing the compliance team has reviewed and approved all marketing materials before release. Creating a system where each approved piece of content receives a compliance code establishes a paper trail for your review process.

Any time the SEC—or any regulatory body—makes updates to policy, CCOs must take note. It's not a cause for panic, but it is a time to pay careful attention to your firm's current processes.

Identify what needs to change, and take explicit steps to make necessary adjustments. Finally, don't forget the importance of documentation in providing evidence of compliance with any regulation.

If adhering to the new marketing rules feels overwhelming, a comprehensive compliance tool like Orion Compliance can help you keep track of the moving parts and hit crucial deadlines. Reach out to schedule your demo today.

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