

ALABAMA SECURITIES COMMISSION ANNOUNCEMENT OF NEW POLICY AND INVESTMENT ADVISER GUIDANCE

The Alabama Securities Commission has adopted changes to its policies on investment adviser use of testimonials, endorsements, and social media, allowing Alabama registered investment advisers similar latitude in marketing activities as SEC registered investment advisers.

The Policy Statement, which is attached, is also available on the ASC website. These changes will go into effect on December 4, 2025.

This policy addresses marketing of advisory services to existing and potential clients. Our existing rule prohibiting certain marketing activities was adopted in 1990 and were consistent with the prohibitions imposed by the SEC for federal covered advisers. In the decades since, advertising and referral practices have evolved, as has the technology and methods used for communications. In recognition of these advancements, the SEC adopted a new Marketing Rule which went into effect in 2021. It is the intent of the ASC to level the playing field for investment advisers registered and domiciled in the State of Alabama and enable them to provide existing and prospective clients with useful information as they choose among investment advisers and advisory services, subject to conditions that are reasonably designed to prevent fraud.

THE ASC'S NEW POLICY STATEMENT: KEY TAKEAWAYS

- The Policy eliminates the per se prohibitions on testimonials and endorsements.
- The definition of “advertisement” includes compensated “endorsements” and “testimonials,” where compensation will broadly include both cash and non-cash payments or benefits.
- Endorsements and testimonials will require certain disclosures, some of which must be clear and prominent. The ASC’s policy does not include a de minimis exception for compensation disclosures.
- Advisers will generally need a written agreement for any compensated third-party endorsements and testimonials (which will be viewed as solicitation activities requiring registration), and bad actors will generally not be permitted to be compensated for endorsements or testimonials.
- The ASC will follow the SEC’s Marketing Rule guidelines for the use of performance presentations. Unlike the SEC Marketing Rule, hypothetical performance reports are **not** allowed and remain prohibited.
- The existing recordkeeping requirements will apply and require advisers to make and keep records of all advertisements they disseminate, as well as records related to testimonials, endorsements, third-party ratings, and performance, including back-up documentation that substantiates advertised facts.
- Certain exemptions apply for investment adviser affiliates, registered broker dealers, and Regulation D offerings.

- Social media advertising is expressly made subject to the same regulatory requirements as other forms of advertising and must be reported on the firm's ADV.
- The policy provides clarification for attribution of social media content to an adviser.

In an effort to help our advisers avoid potential pitfalls and inadvertent violations of the new policy, the ASC offers the following summary of common violations the SEC has observed since the enactment of its Marketing Rule:

- Making false and misleading claims about performance, such as advertising simple fees or non-commingling of funds, where that is not a true and accurate statement.
- Failing to present net performance information alongside gross performance.
- Being unable to substantiate performance claims upon demand by the Commission.
- Failing to enter into written agreements with persons giving compensated endorsements.
- Failing to maintain copies of advertisements that appeared on the investment adviser's public website.
- Failing to maintain books and records demonstrating the calculation of performance in advertisements.
- Failing to conduct an annual review of compliance policies and procedures and failing to implement the compliance program.

The ASC is pleased to announce this new policy and our staff is always available to discuss if an adviser has questions regarding compliance. The ASC staff is also happy to review a proposed advertisement in advance of publication should an adviser so desire.