

# Marketing Your Firm? Here's How to Stay on the Right Side of the SEC.

**XYPN Compliance Insights  
into Marketing Your Firm**



Let me introduce myself 🙋

Terria Heng  
**Head of Consulting Services**

# New Marketing Rule, not so new anymore

- New Marketing rule went into effect on May 4, 2021, with a compliance date of November 04, 2022.
- Since then, the SEC has issued a risk alert each year: four (4) alerts since the rule went into effect

# 2025 Risk Alert



Testimonials and  
Endorsements



Third-Party Ratings

# Testimonials and Endorsements

## Testimonial:

- any statement by a current client: about the client experience with the Firm or Representative.

## Endorsement:

- by a person other than a current client: indicates approval, support, or recommendation of the Firm or Representative or describes that person's experience with the Firm or Representative.

## Both:

- directly or indirectly solicits any current or prospective client
- refers any current or prospective client to be a client

# Third Party Rating

- a rating or ranking of an investment adviser provided by a person who is not a related person (any advisory affiliate and any person that is under common control with your firm), and such person provides such ratings or rankings **in the ordinary course of its business.**

# Compliance Requirements

## Testimonials and Endorsements

- The investment adviser discloses, or reasonably believes that the person giving the testimonial or endorsement discloses, the following **at the time** the testimonial or endorsement is disseminated.

# Compliance Requirements

## Testimonials and Endorsements

### Clearly and Prominently:

- a. That the testimonial/endorsement was given by a **current client or by a person other than a current client**;
- b. That **cash or non-cash compensation** was provided for the testimonial or endorsement, if applicable; and
- c. A brief statement of any **material conflicts** of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person.

# Compliance Requirements

## Testimonials and Endorsements

### Promoters

- Agreement must be in place for any compensation greater than \$1,000 in a 12-month period (De-Minimis Compensation)
- If greater than De-Minimis Compensation:
  - Agreement
  - No Disqualifying events (disciplinary events)
- States may require registration as IAR

# Compliance Requirements

## Third Party Ratings

- Has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result

# Compliance Requirements

## Third Party Ratings

### Clearly and Prominently:

- a. The date on which the rating was given and the period of time upon which the rating was based;
- b. The identity of the third party that created and tabulated the rating; and
- c. If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

# Deficiencies

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- Not providing disclosure at the time it was given.
- Not realizing what is a testimonial/endorsement (e.g., refer a friend).



- Failure to provide disclosure as 'clear and prominent'
  - ✘ using hyperlinks
  - ✘ using smaller or lighter font
- Not disclosing whether they are current or former client
- Paying non-cash compensation for referrals (e.g., gift cards) and client not providing required disclosure

## Deficiencies (Cont...)

- Generic compensation arrangement disclosures
  - Disclosure omitted material information and payment terms
- Promoters who were ineligible persons

## Deficiencies (Cont...)




# Deficiencies

## Third Party Ratings

- No due-diligence on questionnaires/surveys.
- Failure to disclose the date on which the ratings were given and the period of time upon which the ratings were based.
- Advertising their rating logo without required disclosure (e.g., in their email signature).

# Deficiencies

## Third Party Ratings

- Failure to provide disclosure as 'clear and prominent'
  -  using hyperlinks
  -  using smaller or lighter font
  -  placing at bottom of webpage instead of near rating

# Audience Q&A

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As a reminder, the Q&A tab is located at the bottom of your screen. You can upvote questions as appropriate! But, do drop your questions as they come up.