CLEVELAND&CO
External in-house counsel

SEC Marketing Rule

Background

Under the Securities and Exchange Commission's (the "**SEC**") new marketing rules, investment advisors will be impacted by these regulatory changes. In December 2020, the SEC implemented reforms under the Investment Adviser's Act of 1940. These changes modernised the rules that govern investment advisor advertisements and payments to solicitors. As a result, a new, consolidated SEC Marketing Rule (the "**Marketing Rule**") came into effect in November 2022. The changes require registered investment advisors, as well as registered private fund advisors to:

1. substantiate advertising claims
2. provide performance recommendations in a fair and balanced manner
3. follow specific guidelines for performance advertising
4. maintain oversight of placement agents
5. update policies and procedures

As such, impacted advisors will need to consider:

1. reviewing investment firm marketing materials
2. Policy and procedure updates
3. disclosure and disclaimer drafting
4. marketing rule contract updates
5. targeted employee training

In addition, promotion arrangements with third party placement agents should also be reviewed.

Next Steps

The Marketing Rule will introduce a number of key material changes to several areas of investment advisory businesses, including marketing materials, contractual arrangements, and policies and procedures. As such, firms should evaluate marketing materials, contracts, and internal policies to bring themselves up to date with the Marketing Rule.

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