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## TRACKING THE PERFORMANCE OF THE ADVISERS ACT MARKETING RULE SINCE ITS INCEPTION

*Over two years have passed since the compliance date for the amendments to Rule 206(4)-1 (the “Marketing Rule” or the “Rule”) adopted by the SEC under the Investment Advisers Act of 1940 (the “Advisers Act”). Since that date, the SEC Staff’s focus on Marketing Rule compliance has been intense. This article summarizes Marketing Rule developments since the November 4, 2022 compliance date, including SEC Staff guidance, risk alerts, examination priorities, and enforcement actions, and discusses related on-going implementation challenges.*

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Amidst the growth of the asset management industry,<sup>1</sup> investment advisers continue to seek opportunities to distinguish themselves in the market and attract new clients by offering innovative products and services, developing new methods of delivering investment advice, and leveraging technological advancements. Investment advisers also need to communicate these innovations to current and potential clients and investors,

and such communications are generally “advertisements” for purposes of the Rule. Investment adviser marketing has long been a focus of the SEC, given the potential risks of misleading clients.

To modernize the Rule and consolidate decades of prior SEC Staff guidance, the SEC adopted significant amendments to Rule 206(4)-1 on December 22, 2020 (the “Amendments”).<sup>2</sup> As revised, the Marketing Rule imposes a set of seven principles-based general prohibitions that apply to all advertisements disseminated by registered investment advisers (“investment advisers”),<sup>3</sup> in addition to specific

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<sup>1</sup> Joseph Lai & Ju-Hon Kwek, *Beyond the Balance Sheet: North American Asset Management 2024*, McKinsey & Company (Sept. 18, 2024) available at <https://www.mckinsey.com/industries/financial-services/our-insights/beyond-the-balance-sheet-north-american-asset-management-2024> (reporting that the global asset management industry’s collective assets under management grew to a record \$132 trillion as of June 2024); see *Investment Adviser Industry Snapshot 2024*, Investment Advisers Association and COMPLY (2024) (stating that over the past six years, over 24 million more individuals have engaged an investment adviser for asset management — a rate of growth in the number of individual clients of 12.8% per year).

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<sup>2</sup> *Investment Adviser Marketing*, Adv. Act Rel. No. IA-5653 (Dec. 22, 2020) (hereinafter, the “Adopting Release”). Before the Amendments, the SEC had not updated Rule 206(4)-1 since its adoption in 1961.

<sup>3</sup> The Rule does not strictly apply to exempt reporting advisers (“ERAs”) or other investment advisers that are not registered with the SEC. However, such investment advisers are subject to the antifraud provisions of Section 206 of the Advisers Act and,

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