

CCO TASK SUPPORT

Please be sure to check your SmartRIA CCO portal to keep up with your monthly Compliance tasks.
Please contact the following for:

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|---|------------------|--|
| • Task Related Questions: | Nancy Harry: | nharry@thecomplianceresource.com |
| | Stacie Craddock: | scraddock@thecomplianceresource.com |
| | Sara Sparks: | ssparks@thecomplianceresource.com |
| • Login & Portal Requests: | Sara Sparks: | ssparks@thecomplianceresource.com |
| • CRP Website & E-mail Communications: | Lindsay Rider: | lrider@thecomplianceresource.com |

CCO TOOLS INCLUDED THIS MONTH:

Forms and Templates referenced in this TMIC can be found on the SmartRIA Template Resource Library or found on our CRP Website [Client Portal](#).

CCO Tools:

- **CCO Checklist** – Complete the attached CCO Checklist for the month of July 2022.
 - **Alternative Investment Acknowledgement Form**
 - **Trade Blotter Review Form**
 - **Client Annual Review Certification Form**
 - **Terminated SP Checklist**
 - **Sample Checks Received Log**

2022 Risk Matrix:

- **Risk Matrix 2022** – During June, July, August – the Risk Matrix review will be part of the CCO Tasks.

Marketing & Advertising Tools:

- **Sample Policies & Procedures** - language for tailoring in WORD version (with Sample Disclosure document)
- **Marketing & Advertising Implementation Checklist**

MARKETING & ADVERTISING RULE – READY OR NOT, HERE THEY COME!

On May 23, 2022, a first-of-its-kind mass email campaign was made to all registered advisers by the SEC. To us, this signifies that the SEC has served its notice that it will aggressively pursue actions against firms that fail to comply with the new rule, set to be fully implemented with firms by November 4, 2022. The SEC warning email stated:

To All SEC-Registered Investment Advisers:

The compliance date for amended Advisers Act Rule 206(4)-1 (Marketing Rule) is November 4, 2022. As of November 4, 2022, SEC-registered investment advisers may no longer comply with the previous advertising rule and cash payments for client solicitations rule or rely on the staff's positions under those rules. Any advertisements disseminated on or after the compliance date are subject to the NEW Marketing Rule. Also, as of November 4, 2022, Advisers Act Rule 206(4)-7 (Compliance Rule) will require SEC-registered investment advisers' policies and procedures to be updated and revised, as appropriate, to ensure they are reasonably designed to prevent violations of the Marketing Rule. In addition, Advisers Act Rule 204-2 (Books and Records Rule), as amended, will require investment advisers to make and keep certain records, such as records of all advertisements they disseminate, including certain internal working papers, performance related information, and documentation for oral advertisements, testimonials, and endorsements. Advisers should also review their Form ADV Part 2A brochure Item 14 (client referrals and other compensation) with respect to Rule 206(4)-3 (Cash Payments for Client Solicitations) being replaced by the Marketing Rule.

References:

- Adopting Rule Release No. IA-5653 - <https://www.sec.gov/rules/final/2020/ia-5653.pdf>
- Marketing Compliance Frequently Asked Questions - <https://www.sec.gov/investment/marketing-faq>
- Rule 206(4)-1 - [https://www.ecfr.gov/current/title-17/chapter-II/part-275#275.206\(4\)-1](https://www.ecfr.gov/current/title-17/chapter-II/part-275#275.206(4)-1)

If you have interpretive questions, please contact the IM Investment Adviser Regulation Office at (202) 551-6787 or IMRules@sec.gov.

ALSO, we recently caught word that the SEC has confirmed they will NOT be issuing further guidance on complying with the new Rule! You got that right, folks – ready or not, in Q4 2022 the SEC will not give us a whole lot more than what you see referenced above in the “educational email”. However, Firms can expect targeted SEC sweeps and examinations to be a priority! Among those who may be impacted by sweeps or examinations are RIAs who have elected to already engage in testimonials, endorsements, performance and/or hypothetical performance, as indicated by the updates and amendments to Part 1!

LET'S GET MOVING AND PREPARE FOR NOVEMBER!

The Marketing Rule is principles-based, and judgements in compliance are shaped largely by regulatory guidance and enforcement precedence. With this lack in SEC guidance and being too soon for takeaways on enforcement actions, it is challenging to formulate policies and procedures and best practices for a firm. It will be very interesting to see how some of the regulators come out swinging on this one.

So, how can firms be best prepared going into November 4th?

UPDATE POLICIES AND PROCEDURES

CRP has provided the WORD version of the Sample Marketing Rule Policies and Procedures. Firms must tailor the SAMPLE language to the Firm's actual practice on what will be allowed or not allowed in the Firm's marketing and advertising materials. Copy and paste the tailored information into a new version of the manual. Additionally, CRP has provided a PDF of our Sample Compliance Manual as a guide to illustrate what sections require attention for deletion and additional updates to reference the rule updates.

GET EDUCATED

CRP has provided a plethora of educational material over the last 3 months to help firms dissect the new Rule - not only for CCOs and Compliance Staff but for training the firm's IAR. A Sample PowerPoint Presentation was included in the July TMR to assist in employee/IAR training. We recommend creating a folder named “Marketing Rule 2022” to save past 3 months of TMIC and TMR publications as well as the tools and resources that will continue to help staff unpack the Rule!

DOCUMENT BEST EFFORT TO ADHERE

Don't forget to complete the Implementation Checklist sent in July's TMIC. This document will help demonstrate your firm's attention to implementing the new Rule and keep your firm on track with review dates! If caught up in one of the sweep targeted exams – your firm will be able to provide an examiner with the best efforts steps your firm took.

ACCESS TO TOOLS/RESOURCES

Hooray! The gifts keep coming.... CRP is providing Sample Marketing Disclosures this month to assist with review on marketing materials. Stay tuned for August 15th TMR. CRP will be providing SAMPLE Advertising Review/Approval checklist to help Compliance Staff document approval on general advertising review, testimonials, endorsements, third party ratings. Again, this will show the SEC you are on top of it!

KEEP IT SIMPLE WHEN IT COMES TO MARKETING LANGUAGE

Marketing fluff and hyperbole will not be acceptable. Regulators will take a strict interpretation of the factual statements used in marketing. If there is one exception to the statement, assume the statement is false and or tailor the language. Most marketing will require hedging language. For example, instead of stating “We help our clients achieve their financial objectives,” a more appropriate hedged statement would be “**Our goal is to help clients** achieve their financial objectives.”