

MEMO# 35873

October 7, 2024

SEC Charges Nine Investment Advisers in Ongoing Sweep into Marketing Rule Violations

[35873]

October 03, 2024

TO: ICI Members

Advertising Compliance Advisory Committee

Broker/Dealer Advisory Committee

Chief Compliance Officer Committee

Investment Adviser and Broker-Dealer Standards of Conduct Working Group

Investment Advisers Committee

Retail SMA Advisory Committee

SEC Rules Committee SUBJECTS: RE: SEC Charges Nine Investment Advisers in Ongoing Sweep into Marketing Rule Violations

On September 9, 2024, the SEC announced that it settled charges against nine registered investment advisers for violations of Advisers Act Rule 206(4)-1 (the "Marketing Rule").[\[1\]](#) All nine firms have agreed to pay a combined \$1,240,000 in civil penalties, ranging from \$60,000 to \$325,000. The firms did not admit or deny the Commission's charges and in addition to paying civil penalties, the firms consented to entry of orders finding that they violated the Investment Advisers Act of 1940 and to cease and desist from those violations.

While previous Marketing Rule settlements involved alleged violations in the use of hypothetical performance, this group of settlements focused on other aspects of the Marketing Rule, including "disseminating advertisements that included untrue or unsubstantiated statements of material fact or testimonials, endorsements, or third-party ratings that lacked required disclosures."[\[2\]](#) A number of these violations involved the firm's website disclosures. The following is a collective summary of the charges, where the Commission found that the advisers allegedly:

- Published untrue statements about third-party ratings in advertisements without date disclosures on which the ratings were given or based. One such statement claimed the firm was rated a "Top 12 Financial Advisor" by Barron's when it was rated as a "Top 1200 Financial Advisor." Another untrue statement suggested it was a top firm providing investment advice to women when the award was for top female investment advisers.

- Disseminated advertisements with unsubstantiated claims that it provided conflict-free advisory services. In one instance, the firm's advertisement claimed the firm was "a true fiduciary that puts the client first by aligning incentives and eliminating conflicts of interest" while also recognizing various conflicts of interest, including those disclosed in its Form ADV Part 2A brochures.
- Disseminated unsubstantiated advertisements regarding an award provided to a firm principal. Additionally, the firm's website included a "Barron's Top Advisor" award which was received only once by the firm in 2018.
- Published advertisements with untrue statements about third-party ratings and posted a false advertisement claiming that it was a member of a nonexistent organization. The advertisement in question contained the purported logo of the nonexistent organization.
- Disseminated advertisements containing two client testimonials that were not current clients and advertised endorsement videos that did not disclose that the endorsers were not clients and were paid.
- Published advertisements that contained statements about third-party ratings of its principal without date disclosures on which the ratings were given or based. In this case, it was not disclosed that the award the principal received was awarded in November 2007, more than 16 years prior.
- Published advertisements with non-disclosed, outdated third-party ratings of its Chief Investment Officer that were received between 2001 and 2004.

Mitra Surrell
Associate General Counsel, Markets, SMAs, & CITs

Notes

[1] See SEC Orders, Abacus Planning Group Inc. (2024) (3-22089), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6678.pdf>; In the Matter of AZ Apice Capital Management LLC (2024) (3-22090), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6679.pdf>; In the Matter of Droms Strauss Advisors Inc. (2024) (3-22091), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6680.pdf>; In the Matter of Howard Bailey Securities LLC (2024) (3-22092), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6681.pdf>; In the Matter of Integrated Advisors Network LLC (2024) (3-22093), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6682.pdf>; In the Matter of Professional Financial Strategies Inc. (2024) (3-22094), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6683.pdf>; In the Matter of Richard Bernstein Advisors LLC (2024) (3-22096), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6685.pdf>; In the Matter of TS Bank d/b/a Callahan Financial Planning (2024) (3-22097), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6686.pdf>; and In the Matter of Beta Wealth Group, Inc. (2024) (3-22095), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6684.pdf>.

[2] See the Commission's press release available here: https://www.sec.gov/newsroom/press-releases/2024-121?utm_medium=email&utm_source=govdelivery.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.