

# Balancing Old Advertising Rules Against Today's Social Media Milieu

- **Richard Kerr, Partner, K&L Gates**
- **David Edwards, President & Wealth Advisor,  
Heron Wealth**
- **Joseph Mannon, Shareholder, Vedder Price**

# Advertising

- **The Current State of the Advertising and Marketing Rules**

- The basics of Advisers Act rule 206(4)-1
- Definition of advertisement
- Types of advertisements
- Performance Advertising
- Testimonials
- Past-Specific Recommendations
- Recordkeeping Requirements

# Advertising

- **Key no-action letters related to Advertising/Marketing**
- **Relatively New Form ADV Disclosure Tied to Advertising**

**-Social Media**

A photograph of Independence Hall in Philadelphia, a large red brick building with a prominent clock tower and a white dome, illuminated at dusk. The building is set against a clear blue sky with some bare tree branches visible in the foreground.

# Advertising

- **The CCO's Role in Overseeing Firm Marketing/Advertising (David)**

- Objectives

- Content

- P&Ps

- Compliance Review Process

- Testing

- Training

- Addressing Advertising in Annual Review

- **Advertising Do's and Don'ts**

# Advertising

- **Disclosure: Maintaining Consistency Between Marketing and Regulatory Reporting**
- **An automated process to capture changes (ERADL)**



# Advertising

- **What Examiners are seeking related to Advertising**

**2019 Never-before-examined firm SEC document request letter**

## **Advertising/Marketing Information**

- **74. All advertisements used by Registrant to inform or solicit investors. If information on services and investments is available on the Internet, such as websites and blogs, make all versions available as either printouts or electronic archives.**
- **75. All pitch books, one-on-one presentations, pamphlets, brochures, and any other promotional and/or marketing materials furnished to existing and/or prospective investors, including materials used when providing educational seminars.**

# Advertising

- **76. A list of all parties compensated for soliciting clients including: total cash and non-cash compensation paid. In addition, copies of any agreements executed with any third party solicitors, any correspondence with such solicitors, and any separate disclosure documents disseminated by such solicitors.**
- **77. A list of all completed requests for proposals (“RFPs”) and due diligence questionnaires (“DDQs”) provided to prospective investors or consultants.**
- **78. Copies of investor letters, investor quarterly management reports, or other communications with current or prospective clients made by or on behalf of Registrant.**



# Advertising

- **Lessons learned from SEC Enforcement cases related to Advertising**
  - ***Arlington Capital Management*** (CCO failure to oversee)
  - ***Wealthfront Advisors*** (robo-adviser running afoul of testimonials)
  - ***Hedgeable*** (CCO didn't know social media should be reviewed)
  - ***Sterling Global Strategies*** (improper back-tested performance advertising)
  - ***MFS Investment Management*** (compliance in dark on performance advertising)
  - ***HBA Advisors*** (hiring marketer who violated rules)
  - ***Romano Brothers*** (YouTube video from dual registrant)
  - ***Minis & Co.*** (track record after merger)



# Advertising

- **SEC undergoing a revamp of Advertising rules**

- Candidates for change?

- Revisiting testimonials prohibition? (IM's Blass)

- Addressing social media

- **Social Media Tripwires and Best Practices**

- 2012 Risk Alert

- **SEC Advertising Guidance**

- Marketing Risk Alert (Sept. 2017)

- IM Guidance (2014)

# Advertising

- **New GIPS standards for 2020**
- **Google Reviews**
- **Navigating the Testimonial Rule**
- **Use of Videos on Signature Line**

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