

FAQ: Compliance

Testimonial IQ

Most frequently asked questions about Testimonial IQ (compliance)

What does the SEC Marketing Rule say about testimonials and endorsements?

In 2020, the SEC announced a single, modernized marketing rule to replace the prior advertising and cash solicitation rules. The changes finally acknowledge that consumer expectations for information have increased and are designed to “allow advisers to provide investors with useful information as they choose among investment advisers and advisory services, subject to conditions that are reasonably designed to prevent fraud.”

The new rule enables advisers to leverage testimonials and endorsements for the first time, but also outlines a number of associated compliance requirements. Among them, the rule requires disclosures displayed “clearly and prominently” which indicate:

- That the testimonial was given by a current client or investor, and the endorsement was given by a person other than a current client or investor, as applicable;
- That cash or non-cash compensation was provided for the testimonial or endorsement, if applicable; and
- A brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser’s relationship with such person

Additionally, the rule notes that testimonials that “meet prong one of the definition of advertisement, will be subject to an adviser oversight and compliance provision.”

In other words, you can use testimonials and endorsements in your marketing material, but it is not a free pass to use content which might otherwise be impermissible. It is important to establish a process to maintain oversight over your testimonials.

What is the difference between a testimonial and endorsement?

The Marketing Rule provides the following definitions:

Endorsement. Statement by person other than current client or investor that:

- Indicates approval, support, or recommendation of the investment adviser or its supervised persons
- Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser

- Refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser

Testimonial. any statement by a current client or investor in a private fund advised by the investment adviser:

- About the client or investor's experience with the investment adviser or its supervised persons
- That directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser
- That refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser

Can I prioritize asking my favorite clients for testimonials?

While the SEC doesn't explicitly require an adviser who uses testimonials to seek them from every client, they do warn of "entanglement" by involving themselves in the process of generating the testimonials (for example, by selectively seeking them from happy clients):

...if the investment adviser takes affirmative steps to involve itself in the preparation or presentation of the comments, to endorse or approve the comments, or to edit posted comments, those comments would be attributed to the adviser. This would apply to the affirmative steps an adviser takes both on its own website or social media pages, as well as on third-party websites. For example, if an adviser substantively modifies the presentation of comments posted by others by deleting or suppressing negative comments or prioritizing the display of positive comments, then we would attribute the comments to the adviser (i.e., the communication would be an indirect statement of the adviser) because the adviser would have modified third-party comments with the goal of marketing its advisory business.

In other words, if you selectively ask only clients you know to be happy, you have played an active role in the testimonial process and the end result (your Google profile, Facebook account or wherever else the testimonials reside) becomes an advertisement.

We encourage firms to work with their compliance team to develop a systematic process for requesting client testimonials to generate candid feedback from a representative sample of their client base.

If I receive a negative testimonial from a client, am I required to share this publicly?

The SEC does not require that you show every testimonial you receive nor do they require you show an equal number of positive testimonials and negative ones:

We do not believe that the general prohibition requires an adviser to present an equal number of negative testimonials alongside positive testimonials in an advertisement, or balance endorsements with negative statements in order to avoid giving rise to a misleading inference, as certain commenters suggested. Rather, the general prohibition requires the adviser to consider the context and totality of information presented such that it would not reasonably be likely to cause any misleading implication or inference.

That said, there is still an expectation that if advisors do not share a full list of testimonials receive, they at a minimum share a representative sample:

General disclaimer language (e.g., "these results may not be typical of all investors") would not be sufficient to overcome this general prohibition. However, one approach that we believe would generally be consistent with the general prohibitions would be for an adviser to include a disclaimer that the testimonial provided was not representative, and then provide a link to, or other means of accessing (such as oral directions to go to the relevant parts of an adviser's website), all or a representative sample of the testimonials about the adviser.

Can I just link directly to reviews on sites like Google, Facebook or Trustpilot?

Advisers are not restricted from allowing clients to post to their webpage or social media accounts (including Google); however, they do risk “adoption” by linking to, or otherwise endorsing, the content:

An adviser “adopts” third-party information when it explicitly or implicitly endorses or approves the information. For example, if an adviser incorporates information it receives from a third party into its performance advertising, the adviser has adopted the third-party content, and the third-party content will be attributed to the adviser. An adviser is liable for such third-party content under the marketing rule just as it would be liable for content it produced itself.

This is why we don't recommend advisers rely on simply linking to reviews on third-party sites or directly embedding them in their webpage: it risks making you liable for content on a third-party site which you cannot control.

I'm registered with my state regulatory agency, not the SEC, can I still use testimonials?

Many states defer to, or directly reference, the SEC guidelines in their own regulations. We encourage all advisers to work with their compliance departments to determine if they are permitted by their regulatory authorities to leverage testimonials or endorsements.

I'm regulated by FINRA, can I still use testimonials?

Testimonial IQ was designed to support advisers registered with both FINRA and the SEC. Testimonial IQ includes workflows to require pre-approval for all content shared with prospective clients and maintains an audit trail of the review/approval process. We encourage all advisers to work with their compliance departments to determine if they are permitted by their regulatory authorities to leverage testimonials or endorsements.

Does Testimonial IQ provide compliance oversight or legal advice regarding the use of testimonials?

No, Testimonial IQ does not provide compliance or legal advice, nor are we endorsed by FINRA, the SEC or any other regulatory body. We do not review, approve or otherwise make recommendations regarding testimonials you may receive through our platform. Instead, we offer a customizable platform to enable your team to develop a standardized process for leveraging testimonials or endorsements. Usage of our platform does not guarantee compliance with relevant regulations.

How does Testimonial IQ store and protect our data?

We take data security and storage seriously. We use state of the art practices to encrypt all data in transit and at rest. We partner with Amazon AWS for industry-leading cloud datacenter reliability and conduct ongoing penetration testing to keep your information secure. You have the ability to download full copies of all of your stored data at any time.

Important note:

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