

GPS INSIGHTS

LESSONS TO BE LEARNED FROM AN SEC ENFORCEMENT CASE RELATING TO PERFORMANCE ADVERTISING & THE GIPS® STANDARDS

Regulators continue to devote significant attention to the issue of how and under what circumstances investment advisers may advertise their services and present performance results. The Securities and Exchange Commission (SEC) and state securities regulators are constantly focused on reviewing websites and performance advertising for accuracy. In addition, the North American Securities Administrators Association (NASAA) has indicated advertising as a common deficiency found during investment adviser examinations conducted by state securities regulators.ⁱ

Firms that claim compliance with the Global Investment Performance Standards (GIPS®) must make reference to their claim of compliance in their performance advertising materials. The SEC and state securities regulators do not specifically enforce compliance with the GIPS standards; however, these regulators can cite a deficiency or bring an enforcement action against an adviser if a firm is found to be falsely or inaccurately claiming GIPS compliance.

While each deficiency and enforcement action has unique facts and circumstances, there are clearly lessons that other investment advisers can learn to help them avoid putting themselves in a similar situation.

CASE STUDY

APRIL 2013, the Division of Enforcement (Division) alleged an investment adviser and its principal distributed advertisements that included statements that were materially misleading or falseⁱⁱ. Specifically, it was noted that material information was omitted which would have revealed that the adviser's historical performance results were underperforming its benchmark index rather than outperforming it. It was also alleged that the firm falsely claimed compliance with the Global Investment Performance Standards (GIPS®). The Division further alleged that the firm distributed advertisements that falsely claimed that the firm's performance results had been verified by a third-party verification firm.

CONSIDERATIONS

- When preparing and reviewing performance presentations, consider if any periods have been omitted that would potentially give the reader a different understanding of

the performance track record if not omitted. For example, if the firm outperforms the benchmark when presenting the three-year, five-year, and since inception annualized returns but underperforms the same benchmark when the period-to-date return is presented, then it may not be appropriate to omit the period-to-date return. In addition, even if not potentially misleading, performance results presented should be relatively current and not stale.

- Statistics included in advertising materials should be consistent each period that the materials are published. Opportunistically changing the statistics that are presented on a regular basis can give the impression that a firm is “cherry-picking” to only provide information that shows the adviser in the best light.
- GIPS compliance is all or nothing—firms who want to reference GIPS must comply with all the requirements outlined in the GIPS standards. Presentations that make reference to GIPS compliance must include all statistics and disclosures required by the Standards. In addition, GIPS compliant firms who choose to claim GIPS compliance in an advertisement must follow either the GIPS Advertising Guidelines or attach a GIPS compliant presentation.
- Firms who undergo GIPS verification should ensure that the disclosures regarding the verification are accurate. Disclosures that reference the firm’s verification should indicate the *specific* dates that the verification covered.
- Advertisements must be fair and balanced—as a compliance officer, if you are reviewing a piece and you feel it gives an inaccurate impressions of your firm’s capabilities or historical accomplishments, then this is a problem that needs to be addressed.

ⁱ www.nasaa.org/6156/coordinated-state-exams-identify-top-investment-adviser-deficiencies/

ⁱⁱ www.sec.gov/litigation/admin/2013/ia-3574.pdf

ABOUT GPS

Guardian Performance Solutions is a specialty compliance consulting firm dedicated to providing customized solutions to the investment management industry with the objective of assisting advisers to create compliant performance advertising materials. We help investment advisers achieve their goals of marketing their services and growing their business, while also meeting their regulatory obligations and adhering to industry accepted standards and best practices.

One of our focus areas is helping asset managers to implement GIPS® compliance programs. Because we don’t provide verification services, we are free from independence concerns and can take a hands-on approach to developing and managing the GIPS compliance process. Additional information can be found at www.GuardianPerformanceSolutions.com.