Debate, if you wish, whether pitchbooks are ads but best practices suggest review them

Published on: 4/28/2014

You've probably run into this a few times in your day. Marketers who insist they've created a pitchbook for a one person only so, of course, it can't be seen as an ad in the **SEC**'s view.

The advertising rules are clear that a unique communication targeted to one person generally isn't considered an ad. But it may be difficult to ensure that that communication stays with only that one person or is truly unique.

Pitchbooks often contain standardized material that may be used over and over again or have appeared in other ads, warns **Michael Henry**, a principal with **Compass Compliance Services** in Greenville, S.C. You'd be surprised, he says, how many times material developed for one person ends up on a firm's website or in other advertising materials.

"Consider everything to be an advertisement, that way you don't have to worry about where they may end up," he recommends.

That's the stance at **Clark Capital Management Group** ($2.1B in AUM) in Philadelphia. "Everything comes through the compliance department" whether they're fact sheets, commentaries, newsletters, e-mails for webinars or pitchbooks, says COO/CCO **Denise Williams**.

A prospect's name would appear on the front cover of a one-off document. "Some people call these 'pitchbooks,'" Williams says. She labels these as due diligence documents. But these, too, must go through the compliance department before they can leave the shop.

A process for reviewing ads

Williams has put into place an extensive review and approval process. It begins with a "pre-check" in the design stage to make sure all performance numbers match up and that the firm maintains supporting data. Then there's a quality control step "where it is spot-checked," she continues. A third step examines disclosures and statements. "Then it will come to me for a final review," Williams says.

This process "doesn't leave the marketing people with discretion to decide what's advertising and what's not," she adds.

Another reason to include even one-off pitchbooks in your reviews is that you never know where the materials may end up. Clark Capital features one of its pitchbooks on its website.

"Pitchbooks are not always tailored to an individual," states **Michelle Cirillo**, a partner with **Bingham** in Boston. Many firms repeatedly use pitchbooks or recycle parts of them, which would render them as ads in the SEC's view, she says - providing another rationale for adding these to your compliance reviews.

Last year featured an SEC enforcement action against an individual stemming from the use of pitchbooks (**IA Watch**, July 1, 2013). **Jason D'Amato** got into trouble for fabricating data. The SEC noted that "the actual data in the Pitchbooks remained consistent" through their repeated uses.

Examiners seek pitchbooks

Also, SEC examiners almost always ask to see examples of pitchbooks, another reason to keep a close compliance eye on them (**IA Watch**, Oct. 10, 2008).

SEC rules generally don't regard certain materials as being advertisements. For instance, written communications made after receiving an unsolicited request from a client (**IA Watch**, April 18, 2011).

Reports to an individual client also wouldn't be considered to be an advertisement, but missteps can occur here as well. "Sometimes the client report crosses over to advertising" because it will contains firm marketing information, push other services or feature performance advertising, points out **Michelle Kennedy**, also a principal with Compass Compliance Services. "People overlook" this, she says.

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