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Zeroing in on when a one-on-one presentation becomes an advertisement

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Many CCOs have heard the protestations from marketers. "That ad didn't need to be run through compliance first because the materials would go to only one person."

That very well could be a misreading of Advisers Act [rule 206\(4\)-1](#) (advertisements by investment advisers) and its wording that an ad must be "addressed to more than one person." Here's the entire relevant language:

the term advertisement shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.

There are legitimate examples of one-on-one presentations. The problem often develops when the materials are reused for subsequent presentations, thus morphing into an ad in the SEC's eyes. Anticipate a deficiency if examiners find a template for one-on-one presentations that you don't consider an advertisement, states **Tina Mitchell**, senior compliance consultant at **Core Compliance & Legal Services** in San Diego.

Another deficiency may well be issued if your ad shows only gross performance. That would be acceptable for a true one-on-one presentation but would have to include net-of-fees performance if it's an ad, she says.

One can add up to more

But don't think a presentation created for one person becomes an ad just because more than one person sits in the room, says **Tim Simons**, senior managing member of **Focus 1 Associates** in Jacksonville, Ore. Say, for instance, that the entity's entire board joins the presentation. "That's a one-on-one because they all represent the same entity," he says.

The SEC took up the topic in its 1993 "[no-action](#)" letter to **Denver Investment Advisers**. The agency rejected an adviser's profile, stating that it "clearly is a communication addressed to more than one person."

There are narrow exceptions to the advertising rule that would fit the one-on-one scenario. For instance, when "the material is prepared for a specific client taking into consideration that client's individual needs or circumstances or if it is prepared in response to an unsolicited request from a client or prospect for information particular to the adviser," says **Michael Henry** of **Compass Compliance Services** in Greenville, S.C.

Considering the greyness of the rule, the best compliance policy would be to insist that all materials must be approved by compliance, says Henry. Simons and CCOs interviewed by **IA Watch** agree.

A best practice at a large firm is the creation of a "performance group" that reviews all performance data. Then the materials go to the head of marketing to review before landing on the CCO's desk. The CCO would pull some ads from time to time to test the process, says Simons.

Some firms offer a library of pre-approved pages that marketers can pull from at any time.

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