

#### **INTRODUCING**

# MY RIA LAWYER

One-Stop Financial Services Law Firm



# A few questions





#### RAISE YOUR HAND IF...

1. You look up reviews before you go to a new restaurant.

2. Ask your friends who they use for a plumber, electrician, or handyman.

3. Research a new doctor or doctor's office before making an appointment.



#### THE NUMBERS SPEAK FOR THEMSELVES

- #1 92% of consumers read online reviews and testimonials when considering a purchase. (Vendasta)
- #2 95% of people say that reviews whether positive, or negative influence their purchasing decisions. (Wyzowl)
- #3 90% of buyers who read positive customer success content claimed that it influenced their purchasing decisions. (Dimensional Research)
- #4 Customer testimonials have the highest effectiveness rating for content marketing at 89%. (Social Fresh)
- #5 The regular use of testimonials can help you generate 62% more revenue from every customer, not just once, but every time they visit your site. (BigCommerce)
- #6 88% of consumers trust online reviews as much as personal recommendations. (Search Engine Land)
- #7 92% of people will trust a recommendation from a peer, and 70% of people will trust a recommendation from someone they don't even know. (Nielsen)
- #8 9 out of 10 people say they trust what a customer says about a business more than what that business says about itself. (Wyzowl)
- #9 91% of millennials trust online reviews as much as friends and family. (BrightLocal)
- #10 92% of consumers trust peer recommendations. (Search Engine Watch)





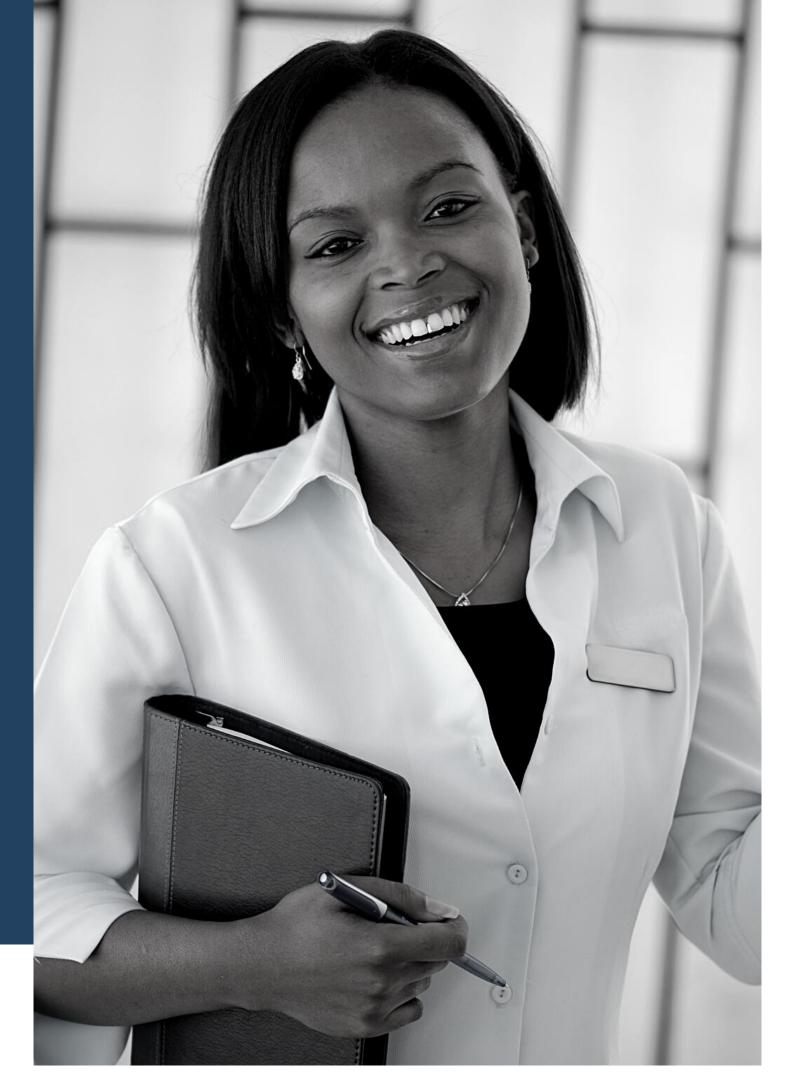
- In December 2020, the Securities and Exchange Commission (SEC) finalized amendments to its advertising and solicitation rules under the Investment Advisers Act of 1940, as amended. Those finalized amendments merged the Advisers Act's current advertising rule (Rule 206(4)-1) with the cash solicitation rule (Rule 206(4)-3) under a new rule: Rule 206(4)-1, the Investment Adviser Marketing rule.
- SEC-registered investment advisers (RIAs) had to comply with the new marketing rule by November 4, 2022.
- The new rule defines a testimonial as any statement by a current client about the client's experience with the investment adviser or its staff that directly or indirectly solicits or refers any current or prospective client to be a client of the investment adviser.
- The new rule defines an endorsement as any statement by a person other than a current client advised by the investment adviser that indicates approval, support, or recommendation of the investment adviser or its staff or describes that person's experience with the investment adviser or its staff; directly or indirectly solicits or refers any current or prospective client or investor to be a client of the investment adviser.

#### **COMPLIANCE CONSIDERATIONS**

The new rule's requirements for including testimonials and endorsements in advertisements are as follows:

- An RIA may not include a testimonial or endorsement unless the RIA discloses or reasonably believes the person giving the testimonial or endorsement discloses at the time the advertisement is disseminated:
  - Clearly and prominently, within the testimonial or endorsement that a current client or investor gave the testimonial, or someone other than a current client or investor gave the endorsement;
  - Clearly and prominently, within the testimonial or endorsement that the person providing the testimonial or endorsement received cash or non-cash compensation for doing so; and
  - Clearly and prominently, within the testimonial or endorsement any material conflicts of interest on the part of the person providing the testimonial or endorsement stemming from their relationship with the RIA.
- An RIA may not include a testimonial or endorsement for which compensation is paid, unless the material terms of the compensation arrangement are disclosed, including a description of the compensation; and
- An RIA may not include a testimonial or endorsement that involves material conflicts of interest on the part of the person providing the testimonial or endorsement as a result of their relationship with the RIA, and/or the compensation agreement unless the material conflicts are disclosed.

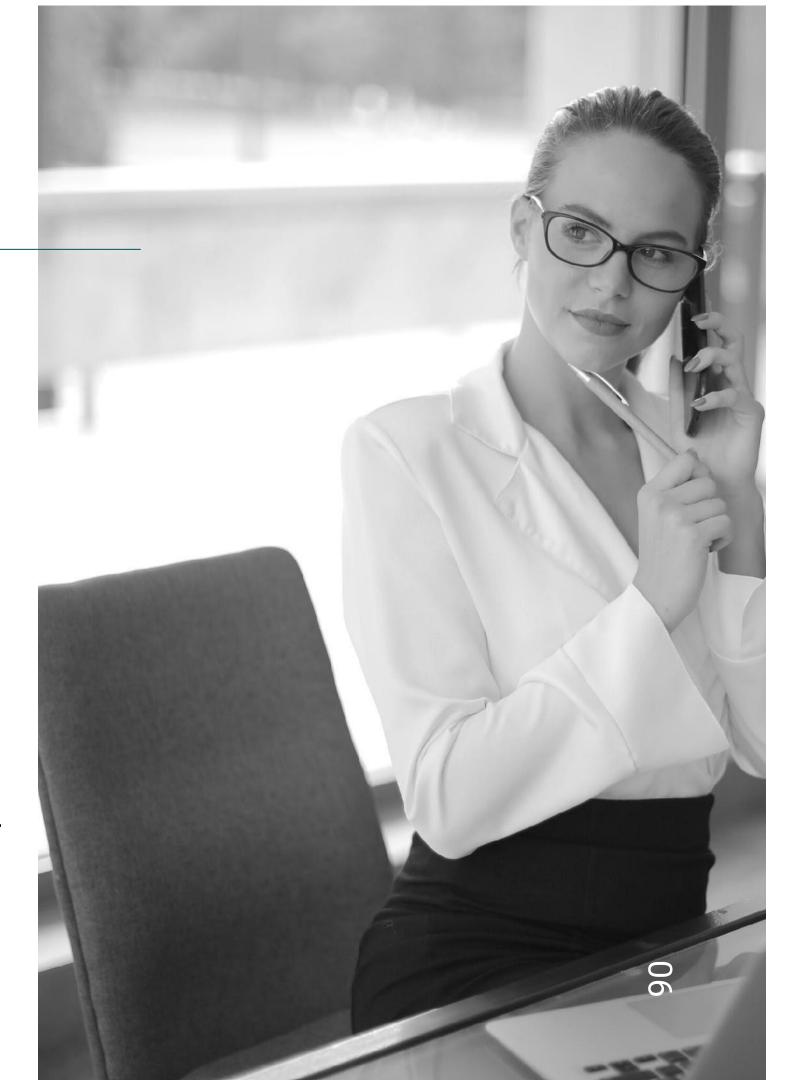




- An RIA may not include testimonials and endorsements in advertisements, or provide compensation for one, if an RIA does not have a reasonable basis to believe that the testimonial or endorsement complies with the new rule. If an RIA has a reasonable basis to believe it complies, it must keep documentation that substantiates why it does. RIAs must also enter into a written agreement with a person providing a testimonial or endorsement regarding the scope of their activities and the compensation terms. However, no written agreement is required when the compensation paid to the person providing the testimonial or endorsement is \$0 (or the non-cash equivalent), or totaled \$1,000 or less (or the non-cash equivalent) over the past 12 months.
- RIAs cannot compensate a person for a testimonial or endorsement if the RIA knows or reasonably should know that person is an "ineligible person" under the new rule. This requirement is not applicable when the compensation paid to the person providing the testimonial or endorsement is \$0 (or the non-cash equivalent), or totaled \$1,000 or less, (or the non-cash equivalent) over the past 12 months.
- Testimonials or endorsements from a partner, officer, director, or employee of an RIA, or a person that controls, is controlled by, or is under common control with the RIA, or is a partner, officer, director or employee of such a person are exempted from the disclosure and written agreement requirements, provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or investor at the time the testimonial or endorsement is disseminated, and the investment adviser documents such person's status at the time the testimonial or endorsement is disseminated.

#### ADDITIONAL CONSIDERATIONS

- "Compensation" for testimonials or endorsements could include such things as offering reduced management fees in exchange for introductions or referrals. Other types of compensation that RIAs should be aware of include paid travel expenses for investor meetings and other events.
- The scope of the rule goes far beyond Google reviews, LinkedIn endorsements and Facebook comments. Here are some examples of statements that could be a deemed a testimonial or endorsement under the rule:
  - Social media posts where the RIA has adopted or is involved in the preparation of the posts or otherwise "entangled" in the communication;
  - Statements made by portfolio company executives about their experience working with the RIA posted on the RIA's website;
  - Statements made by a vendor who is a client and is charged a reduced management fee.



# How do I request testimonials?

- Send out a survey.
- Provide a link to your Google My Business page.
- Request endorsements through LinkedIn.
- Send out an email blast to clients requesting testimonials.
- Consider video testimonials for your website.
- Get your gift cards ready!
- Create a referral program.





### DO'S AND DON'TS

Under the rule, an advertisement may not:

- Include an untrue statement of a material fact, or omit a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;
- Include a material statement of fact that the RIA does not have a reasonable basis for believing it will be able to substantiate upon demand by the SEC;
- Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the RIA;
- Discuss any potential benefits to clients or investors connected with or resulting from the RIA's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;
- Reference specific investment advice provided by the RIA, where such investment advice is not presented in a fair and balanced manner;
- Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or
- Be otherwise materially misleading.

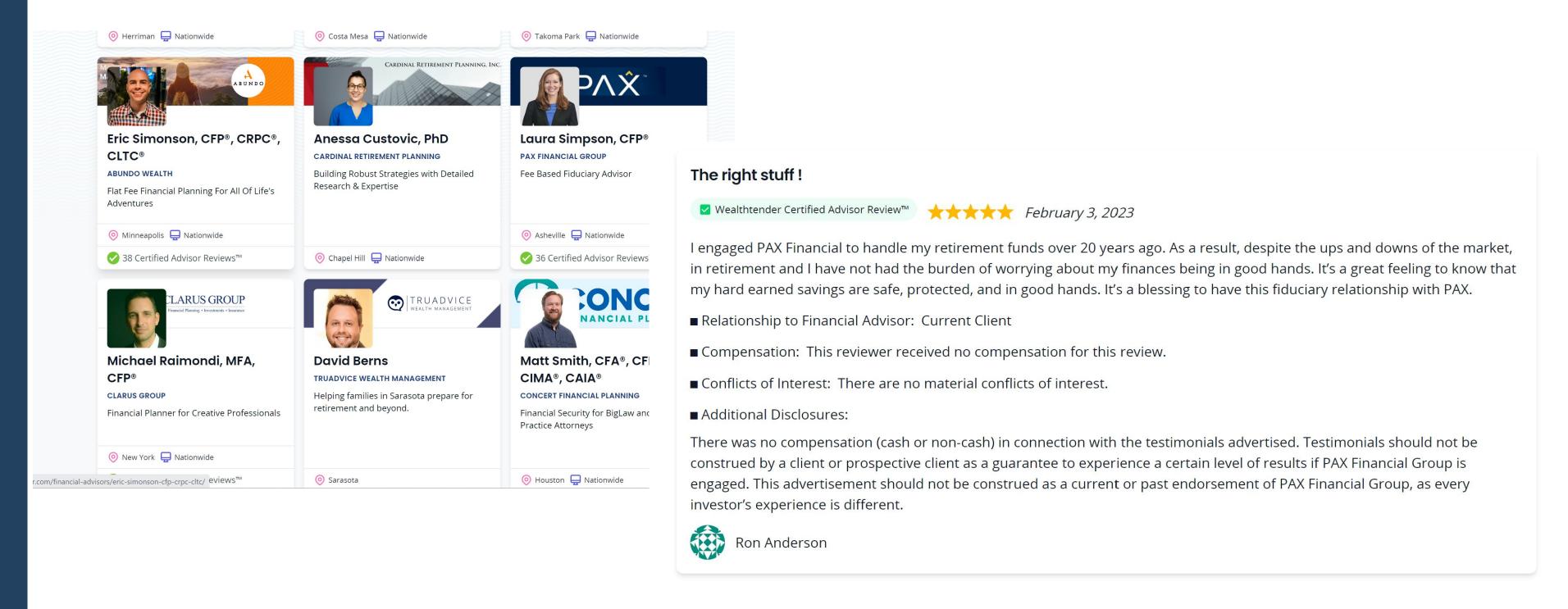
- This means no cherry picking.
- You must publish all the testimonials, not just the good ones
- You can't put them in an arbitrary order or try to "hide" the bad reviews
- You can add a testimonials page to your website
- If you respond to a testimonial, it can be seen as an advertisement and would need to go through ad review
- Using testimonials in your marketing is ALLOWED, but must be fair and balanced.

#### **RECENT REGULATORY FINES**

- On September 9, nine firms settled charges for disseminating advertisements that included untrue or unsubstantiated statements or testimonials, endorsements or third-party ratings that lacked the required disclosures.
- Combined, they paid \$1,240,000 in fines
  - Abacus Planning Group Inc. agreed to pay a civil penalty of \$150,000;
  - AZ Apice Capital Management LLC agreed to pay a civil penalty of \$70,000;
  - Beta Wealth Group, Inc. agreed to pay a civil penalty of \$80,000;
  - Droms Strauss Advisors Inc. agreed to pay a civil penalty of \$85,000;
  - Howard Bailey Securities LLC agreed to pay a civil penalty of \$90,000;
  - Integrated Advisors Network LLC agreed to pay a civil penalty of \$325,000;
  - Professional Financial Strategies Inc. agreed to pay a civil penalty of \$60,000;
  - Richard Bernstein Advisors LLC agreed to pay a civil penalty of \$295,000; and
  - TS Bank d/b/a Callahan Financial Planning agreed to pay a civil penalty of \$85,000
- Abacus and Callahan Financial published advertisements with untrue statements about third-party ratings and that Callahan Financial posted an advertisement falsely claiming that it was a member of an organization that did not exist.
- AZ Apice, Callahan Financial, Droms Strauss, and Integrated Advisors disseminated advertisements that claimed to provide conflict-free advisory services, which the firms were not able to substantiate.
- Beta Wealth disseminated advertisements that it could not substantiate regarding an award provided to a firm principal.
- Howard Bailey disseminated advertisements claiming to contain two testimonials, but neither actually came from current clients. It also advertised endorsements that did not disclose that the endorser was a paid, non-client of Howard Bailey in videos, on social media, and on physical objects such as bags and flags.
- Abacus, Beta Wealth, Professional Financial, and Richard Bernstein Advisors included in their advertisements third-party ratings, some of which were more than five years old, without disclosing the dates on which the ratings were given or the periods of time upon which the ratings were based.



#### WWW.WEALTHTENDER.COM



Of the over 400 reviews received on the website, 2 were 4-star reviews and the rest were 5-star reviews.

## Q & A

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Join Leila Shaver for a Q & A Session on Friday, November 1<sup>st</sup> at 2:00PM EST