

SEC Marketing Rule FAQs Provide New Guidance on Presenting Gross and Net Performance in Extracted Performance and Investment Characteristics

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On March 19, 2025, the U.S. Securities and Exchange Commission (SEC) Division of Investment Management staff published two new responses to Frequently Asked Questions (each, an FAQ) aimed at providing clarity on Rule 206(4)-1 (the Marketing Rule)^[1] under the Investment Advisers Act of 1940, as amended (the Advisers Act). Generally, the new FAQs permit the use of extracted performance (including for individual investments) and certain performance-related characteristics on a gross basis in advertisements, without the need to include corresponding net-of-fee information, provided specific conditions are met. The conditions outlined by the SEC staff are substantially similar for each FAQ and are described in detail below.

EXTRACTED PERFORMANCE

When an adviser displays the gross performance of a single investment or a group of investments from a private fund or portfolio (referred to as an extract), the Marketing Rule generally requires the adviser to also present the net performance of that extract. However, the new FAQs clarify that where gross performance of an extract has been presented without including corresponding net performance of such extract, the SEC staff would not recommend enforcement action against the adviser if the following conditions are satisfied:

1. The extracted performance is clearly identified as gross performance;
2. The extracted performance is accompanied by a presentation of the total portfolio's gross and net performance consistent with the requirements of the Marketing Rule;
3. The gross and net performance of the total portfolio is presented with at least equal prominence to, and in a manner designed to facilitate comparison with, the extracted performance; and
4. The gross and net performance of the total portfolio is calculated over a period that includes the entire period over which the extracted performance is calculated.

The FAQs emphasize that these conditions apply not only to single portfolios but also to composites of related portfolios. The staff noted that performance extracted from a composite of portfolios may be considered hypothetical performance.

PORTFOLIO OR INVESTMENT CHARACTERISTICS

The SEC staff acknowledges that advisers may be unsure whether certain characteristics (yield, coupon rate, contribution to return, volatility, sector or geographic returns, attribution analyses, the Sharpe ratio, the Sortino ratio, and other similar metrics) are considered “performance” under the Marketing Rule. Notably, the SEC staff does not take a definitive position on this issue. Instead, the SEC staff stated that if an adviser prominently displays the gross and net performance of the total portfolio in compliance with the Marketing Rule and provides appropriate accompanying information about the characteristic and its calculation, there is little risk of misleading prospective investors regarding the impact of fees and expenses. Accordingly, the SEC staff indicated it would not recommend enforcement action if an adviser chooses to present in an advertisement one or more gross characteristics of a portfolio or investment, even if it does not include the corresponding net characteristic(s), if the following conditions are satisfied:

1. The gross characteristic is clearly identified as being calculated without the deduction of fees and expenses;
2. The characteristic is accompanied by a presentation of the total portfolio’s gross and net performance consistent with the requirements of the Marketing Rule;
3. The total portfolio’s gross and net performance is presented with at least equal prominence to, and in a manner designed to facilitate comparison with, the gross characteristic; and
4. The gross and net performance of the total portfolio is calculated over a period that includes the entire period over which the characteristic is calculated.

ADDITIONAL TAKEAWAYS

In a footnote, the SEC staff clarified that the gross and net performance of the total portfolio does not need to appear on the same page as the extracted performance to meet the “equal prominence” and “facilitate comparison” conditions, as long as the presentation facilitates comparisons between the gross and net performance of the total portfolio and the extracted performance. The SEC staff further noted that presenting the gross and net performance of the total portfolio before the extracted performance in the advertisement could help facilitate such comparisons and ensure that both are presented with at least equal prominence to the extracted performance.

With regard to both of the new FAQs, the SEC staff notes that any advertisement that presents the gross performance of extracts and/or characteristics in accordance with the two new FAQs described above remains subject to the general anti-fraud prohibitions under Rule 206(4)-1(a), as well as Sections 206(1) and 206(2) of the Advisers Act (i.e., the general anti-fraud provisions of the Marketing Rule and the Advisers Act, respectively).

The two new FAQs are effective immediately and are available [here](#).

[1] Information regarding the Marketing Rule is available [here](#) and [here](#).

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