

Insights

SEC STAFF ISSUES WELCOME GUIDANCE ON EXTRACTED PERFORMANCE AND PORTFOLIO CHARACTERISTICS UNDER THE MARKETING RULE

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On March 19, 2025, the staff of the U.S. Securities and Exchange Commission (the “SEC”) updated its [Frequently Asked Questions](#) (“FAQ”) pertaining to Rule 206(4)-1 (the “[Marketing Rule](#)”) under the Investment Advisers Act of 1940, as amended (the “[Advisers Act](#)”). These updates provide SEC-registered investment advisers with helpful clarification and flexibility in the presentation of extracted performance and portfolio or investment characteristics.

EXTRACTED PERFORMANCE

Before these FAQ updates, the industry wrestled with how to address net performance of extracted subsets of a portfolio in marketing materials, such as case studies or lists of individual investments, since the Marketing Rule by its terms requires gross performance of an extract to be accompanied by net performance.

The updated FAQ take a common sense approach, recognizing that “when an adviser prominently displays the *gross and net performance* of the total portfolio from which an extract was extracted, calculated pursuant to the requirements of the marketing rule and presented in a manner that is not otherwise materially misleading, and appropriate information accompanies the gross performance of the extract, there is little risk that presenting only the gross performance of an extract will be misleading.”^[1]

The requirements for providing only gross performance of an extract are as follows:

1. The extracted performance is clearly identified as gross performance;^[2]
2. The extracted performance is accompanied by a presentation of the total portfolio’s gross and net performance consistent with the requirements of the 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;^[3]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.

PORTFOLIO OR INVESTMENT CHARACTERISTICS

The term “performance” is nowhere defined in the Marketing Rule, and the updated FAQ recognize industry uncertainty about whether certain portfolio or investment characteristics such as “yield, coupon rate, contribution to return, volatility, sector or geographic return, attribution analyses, the Sharpe ratio, the Sortino ratio and other metrics” constitute performance subject to the Marketing Rule, such that presentation of gross information would require presentation of net information as well.

Although the updated FAQ do not resolve the issue of whether such characteristics are performance^[4]subject to the Marketing Rule, they do take a practical approach. As with extracted performance, the SEC staff recognizes that presentation of gross information of such portfolio metrics without accompanying net information poses little risk, as long as appropriate information accompanies the gross information.

The requirements for providing only gross portfolio or investment characteristics in marketing materials are comparable to those for providing only gross performance of extracts:

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 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.

For both extracted performance and portfolio or investment characteristics, the updated FAQ specifically state that extracted performance and portfolio or investment characteristics do not need to be calculated under the one-, five- and 10-year (or since inception) periods required by Rule 206(4)-1(d)(2) under the Advisers Act, provided that such information “is calculated over a single, clearly disclosed period.”

NEXT STEPS

The updated FAQ are effective immediately. We recommend that SEC-registered advisers review their current marketing materials for compliance, consider whether they wish to revise their market materials to take advantage of this new guidance and consider whether their marketing compliance policies and procedures and training materials should be revised to reflect this guidance.

[1] A footnote to the updated FAQ cautions that the SEC staff’s guidance applies to the performance of an extract from a portfolio or an extract from a composite of all related portfolios. Performance extracted from a composite of portfolios may be considered subject to separate hypothetical performance rules.

[2] A footnote to the updated FAQ specifies that “[t]he staff would view an advertisement as clearly identifying that the extracted performance is gross performance if, for example, it discloses that the extracted performance shown does not reflect the deduction of all fees and expenses that a client or investor has paid or would have paid and refers the recipient to the presentation of the total portfolio’s gross and net performance to understand the overall effect of fees.”

[3] A footnote to the updated FAQ explains that the presentation of performance of the total portfolio does not necessarily need to be on the same page as the extract performance, provided that the presentation facilitates comparison between the gross and net performance of the total portfolio and the extracted performance. The footnote specifically states that “. . . in the staff’s view, presenting the gross and net performance of the total portfolio prior to the extracted performance in the advertisement could also facilitate such comparisons and help ensure they are presented with at least equal prominence to the performance of the extract.” In other words, gross and net performance for the entire performance generally should be presented before any extracted performance.

[4] Importantly, a footnote to the updated FAQ explicitly states that the guidance on does not apply to “total return, time-weighted return, return on investment (RoI), internal rate of return (IRR), multiple on invested capital (MOIC), or Total Value to Paid in Capital (TVPI).”

RELATED PRACTICE AREAS

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