

SEC Staff Issues FAQs That Relax Marketing Rule Restrictions

The FAQs provide investment advisers greater flexibility to present investment performance solely on a gross basis.

On March 19, 2025, the Securities and Exchange Commission (SEC or the Commission) Staff [released](#) two new interpretations (FAQs) relating to Rule 206(4)-1 under the Investment Advisers Act of 1940 (the Marketing Rule).

As the SEC Staff previewed at the Investment Adviser Association conference on March 7, 2025, the FAQs address key issues for many private fund advisers regarding:

- the presentation of performance of individual investments (“extracted performance” or “case studies”); and
- the presentation of certain metrics (such as yield, contribution to return, Sharpe ratio, and other similar metrics) for which it is unclear whether such metrics are considered “performance” under the Marketing Rule.

Both FAQs relax the requirements relating to net performance and provide investment advisers with additional flexibility to illustrate portfolio characteristics, so long as certain other requirements are met, as summarized below. These FAQs replaced a prior interpretation from January 2023, which stated that net performance was required for individual investments and case studies.

Presentation of Gross Extracted Performance (or “Case Studies”)

The first FAQ addresses the presentation of net performance in marketing materials when an adviser displays the gross performance of one investment or a group of investments from a private fund or other portfolio (i.e., an “extract”).

According to the FAQ, the SEC Staff believes that when an adviser prominently displays the gross and net performance of the total portfolio (or fund) from which an extract was extracted, which is calculated pursuant to the requirements of the Marketing Rule and presented in a manner that is not otherwise materially misleading, and when 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.

As such, the SEC Staff stated in the FAQ that it would not recommend enforcement action to the Commission under Rule 206(4)-1(d)(1) if an adviser displays the gross performance of an extract in an advertisement without including corresponding net performance of the extract, if each of the following conditions is met:

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 (for example, if total portfolio performance reporting precedes references to 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.

Key Takeaways

Based on this FAQ, private fund advisers will be able to revert to the historic practice of showing individual investments and case studies solely on a gross basis, so long as the other requirements of the rule are met.¹ To rely on this guidance, the gross and net performance of the overall portfolio will need to be shown, and the FAQ makes clear that showing such performance *prior* to the case study would eliminate the need to show the net performance of the overall portfolio on the same slide, page, or section as the case study. In addition, the typical performance table used by private fund advisers will no longer need to include net performance for individual investments as long as it includes the gross and net performance of the overall portfolio, with appropriate disclosures.

One point that is subject to further consideration in light of the FAQ is how it would apply to certain types of hypothetical performance. The FAQ states that it applies to the performance of “an extract from a portfolio and of an extract from a composite of all related portfolios.” The FAQ also provides for performance extracted from a representative account; however, it does not specifically address whether a similar approach could be taken for performance results of investments held across multiple unrelated portfolios or funds.

Presentation of Certain Portfolio or Investment Characteristics

The second FAQ addresses the presentation of certain investment or portfolio “characteristics” (such as yield, coupon rate, contribution to return, volatility, sector or geographic returns, attribution analyses, the Sharpe ratio, the Sortino ratio, etc.) for which the SEC Staff recognizes (1) it is unclear whether such characteristics are considered “performance” under the Marketing Rule (as “performance” is not defined under the Marketing Rule) and (2) if such characteristics are deemed “performance,” calculating net values for these metrics may be impossible or lead to misleading or confusing results.

Similar to the other FAQ, the SEC Staff notes that when an adviser prominently displays the gross and net performance of the total portfolio calculated pursuant to the requirements of the Marketing Rule, in a manner that is not otherwise materially misleading, and provides appropriate accompanying information about an investment or portfolio characteristic and how it is calculated, there is little risk that prospective clients and prospective investors will be misled about the impact of fees and expenses on their returns when viewing such a characteristic.

In light of these considerations, the FAQ states that the Staff would not recommend enforcement action to the Commission under Rule 206(4)-1(d)(1) 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:

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.

Key Takeaways

For advisers who have been using metrics that are not clearly “performance,” this FAQ provides a safe harbor for the inclusion of such metrics on solely on a gross basis, assuming certain requirements are met.

The FAQ makes clear that this relaxation of the need to present net performance does not apply to the presentation of 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), regardless of how such metrics are labeled in the advertisement.

The FAQ also makes clear that the SEC Staff is not, through the FAQ, taking a position on whether any particular characteristic or attribute should be considered “performance” for purposes of Rule 206(4)-1. To the extent a characteristic is not “performance,” the presentation of such characteristic would not be within the scope of Rule 206(4)-1(d) and therefore the FAQ would not apply.

For those advisers seeking to rely on this FAQ, the SEC Staff makes clear that showing net performance of the full portfolio *prior* to the portfolio or investment characteristics that are being shown in reliance on this FAQ would eliminate the need to show such net performance on the same slide, page, or section as the portfolio or investment characteristic.

The FAQs are available [here](#).

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Endnotes

¹ Notably, the Staff withdrew the January 2023 FAQ that previously required presentation of net performance alongside gross performance for individual investments, case studies, and extracts.