

SEC Provides Helpful Marketing Rule FAQ Guidance

By Joseph M. Mannon, Jeff VonDruska, Cody J. Vitello, David W. Soden, Adam S. Goldman and Laure Sguario

April 2, 2025

On March 19, 2025, the Securities and Exchange Commission (“SEC”) updated its frequently asked questions (FAQs) relating to Rule 206(4)-1 under the Investment Advisers Act of 1940 (the “Marketing Rule”).¹ The new FAQs permit the use of certain performance-related metrics (e.g., yield, coupon rate, contribution to return, volatility, sector or geographic returns, attribution analyses, the Sharpe ratio, the Sortino ratio, and other similar metrics) and extracted performance on a gross basis in advertisements, provided certain basic conditions are met. The FAQs reverse previous FAQ guidance from the SEC requiring the presentation of extracted performance on a net basis. Given the limitations and complexities associated with calculating certain metrics on a net basis, this FAQ guidance will be welcomed by the industry.

The new FAQs provide investment advisers flexibility to present extracted performance and certain performance-related metrics on a gross basis, without also presenting the corresponding net metrics provided the advertisement meets certain specific conditions:

- the extracted performance and/or performance-related metrics is clearly identified as being calculated on a gross basis;
- the extracted performance and/or performance-related metrics is accompanied by a presentation of the total portfolio’s gross and net performance consistent with the requirements of the Marketing Rule;
- 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/or performance-related characteristics; and
- the gross and net performance of the total portfolio is calculated over a period that includes the entire period over which the extracted performance and/or performance-related metrics is calculated.

Investment advisers seeking to take advantage of the additional flexibility provided by the new FAQs should review their marketing materials and disclosures, as well as their related policies and procedures, for conformance with the new FAQs.

Should you have any questions relating to the implementation of the new FAQs, please contact **Joseph M. Mannon** at jmannon@vedderprice.com, **Jeff VonDruska** at jvondruska@vedderprice.com, **Cody J. Vitello** at cvitello@vedderprice.com, **Dave W. Soden** at dsoden@vedderprice.com, **Adam S. Goldman** at agoldman@vedderprice.com, **Laure Sguario** at lsguario@vedderprice.com or the Vedder Price lawyer(s) with whom you normally work.

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¹ <https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/marketing-compliance-frequently-asked-questions>