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Marketing Compliance - Frequently Asked Questions

Updated Jan. 15, 2026

The staff of the Division of Investment Management has prepared the following responses to questions related to the adoption of amendments to rule 206(4)-1 under the Investment Advisers Act of 1940 in December 2020. The staff expects to update this document from time to time to include responses to additional questions. These responses represent the views of the staff of the Division of Investment Management. They are not a rule, regulation, or statement of the Securities and Exchange Commission. The Commission has neither approved nor disapproved these FAQs or the answers to these FAQs. The FAQs, like all staff guidance, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

The adopting release for the amendments to rule 206(4)-1 is available at <https://www.sec.gov/rules/final/2020/ia-5653.pdf> [.\(https://www.sec.gov/rules/final/2020/ia-5653.pdf\)](https://www.sec.gov/rules/final/2020/ia-5653.pdf). If you have questions about the application of these rules, please contact the Division of Investment Management Chief Counsel's Office at 202-551-6825 or IMOCC@sec.gov.

Compliance Date (posted March 18, 2021)

Q: I understand that an adviser must comply with the amended adviser marketing rule with respect to its advertising and solicitation activities by the compliance date (Nov. 4, 2022), which is 18 months after the effective date of the rule. May an adviser choose to comply with some of the marketing rule requirements before the compliance date, but not comply with others?

A: No. An adviser may choose to comply with the amended marketing rule in its entirety any time starting on the effective date, May 4, 2021. Until an adviser transitions to the amended marketing rule, the adviser would continue to comply with the previous advertising and cash solicitation rules and look to the staff's positions under those rules. The staff believes an adviser may not cease complying with the previous advertising rule and instead comply with the amended marketing rule but still rely on the previous cash solicitation rule. Advisers are reminded that they should review their compliance policies and procedures in light of regulatory developments, including the adoption of the amended marketing rule. In addition, the staff believes that when advisers transition to the amended marketing rule, they will need to implement any revisions to the written compliance policies and procedures necessary so that they are reasonably designed to prevent violations of the amended marketing rule. Advisers are also reminded that they are required to maintain a copy of all compliance policies and procedures in effect at any time within the previous five years, and that it should be clear when those policies and procedures were in effect.

Time Period Requirement (posted April 14, 2021)

Q: The marketing rule prohibits an adviser from displaying performance results in an advertisement, unless certain requirements are satisfied. For example, an advertisement, except for an advertisement that includes private fund performance information, must include performance results for prescribed time periods ending on a date that is no less recent than the most recent calendar year-end. My firm is not able to calculate its one-, five-, and ten-year performance data immediately following a calendar year-end, but anticipates having updated performance figures within one month of the calendar year-end. However, my firm has performance information that is current as of the third quarter of that calendar year (“interim performance information”). May my firm instead use the interim performance information in an advertisement?

A: The staff would not object if you are unable to calculate your one-, five-, and ten-year performance data in accordance with rule 206(4)-1(d) (2) immediately following a calendar year-end and you use performance information that is at least as current as the interim performance information in an advertisement until you can comply with the calendar year-end requirement. The staff believes that a reasonable period of time to calculate performance results based on the most recent calendar year-end generally would not exceed one month. The interim performance information remains subject to the other provisions of the marketing rule, including the general prohibitions.

Gross and Net Performance

Extracted Performance (updated March 19, 2025)

Q. When an adviser displays the gross performance of one investment or a group of investments from a private fund or other portfolio, must the adviser show the net performance of such single investment or group of investments?

A. Displaying the performance of one investment or a group of investments in a private fund or other portfolio (an “extract”)[¹] is an example of extracted performance under the marketing rule and, if an adviser shows the gross performance of an extract in an advertisement, the rule requires the adviser to also show the net performance of such extract in the advertisement.[²] The staff, however, believes 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. Specifically, the staff 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:[³]

1. the extracted performance is clearly identified as gross performance;[⁴]
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;[⁵]

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;^[6] 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.

Because time periods over which extracts are calculated may not easily align with the time periods required by Rule 206(4)-1(d)(2), the staff would not recommend enforcement action to the Commission under Rule 206(4)-1(d)(2) if the extracted performance presented as described above was calculated over a single, clearly disclosed period.^[7]

The staff notes that any advertisement that presents the gross performance of one or more extracts in accordance with this FAQ remains subject to the general prohibitions of Rule 206(4)-1(a) (as well as section 206(1) and 206(2) of the Advisers Act).

Portfolio or Investment Characteristics (posted March 19, 2025)

Q. The marketing rule does not define “performance” and, as a result, investment advisers may need to determine whether certain portfolio or investment characteristics (“characteristics”) are performance under the marketing rule. If such characteristics are performance, would the staff recommend enforcement action if an adviser displays characteristics calculated without reflecting the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio(s) (“gross characteristics”), without also showing the corresponding characteristics calculated after the deduction of all fees and expenses (“net characteristics”)?

A. The staff recognizes that advisers may be unsure whether certain characteristics (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)[8] are “performance” under the rule. In addition, even if such characteristics were to qualify as performance, calculating these characteristics net of fees and expenses may be impossible or lead to misleading or confusing results. However, in the staff’s view, when an adviser prominently displays the gross and net performance of the total portfolio calculated pursuant to the requirements of the marketing rule and presented in a manner that is not otherwise materially misleading, and provides appropriate accompanying information about the 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.

Accordingly, 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;[9]
2. the characteristic is accompanied by a presentation of the total portfolio’s gross and net performance consistent with the requirements of the rule;[10]
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;[11] 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.

Because time periods over which characteristics are calculated may not easily align with the time periods required by Rule 206(4)-1(d)(2), the staff would not recommend enforcement action to the Commission under Rule 206(4)-1(d)(2) if the characteristic presented as described above is calculated over a single, clearly disclosed period.^[12]

The staff notes that any advertisement that presents characteristics in accordance with this FAQ remains subject to the general prohibitions of Rule 206(4)-1(a) (as well as section 206(1) and 206(2) of the Advisers Act).

Use of Model Fees (posted Jan. 15, 2026)

Q: Would an investment adviser violate the general prohibitions of Rule 206(4)-1(a) by advertising the net performance of a portfolio that reflects the deduction of the actual fees charged to the portfolio (“actual fees”), when the fees to be charged to the advertisement’s intended audience (“anticipated fees”) are anticipated to be higher than the actual fees charged?

A: The marketing rule’s definition of “net performance” includes (i) a portfolio’s performance after the deduction of all fees and expenses actually paid by a client or investor, and (ii) the portfolio’s performance after the deduction of a model fee, subject to certain conditions. In some circumstances, however, it may be inconsistent with the rule’s general prohibitions to solely present net performance reflecting actual fees.

Specifically, footnote 590 of the adopting release focuses on differences between actual fees charged historically and the anticipated fees to be charged. It states that, when presenting net performance in an advertisement, “[i]f the fee to be charged to the intended audience is anticipated to be higher than the actual fees charged, the adviser must use a model fee that reflects the anticipated fee to be charged in order not to violate the rule’s general prohibitions.”^[13]

Some advisers in this situation have interpreted footnote 590 to categorically require the presentation of net performance calculated using a model fee and to prohibit the presentation of net performance calculated using actual fees.

The Commission noted in the adopting release that the general prohibitions are intended to “provide appropriate flexibility and regulatory certainty for advisers considering how to market their investment advisory services” and “[i]n applying the general prohibitions, an adviser should consider the facts and circumstances of each advertisement.”^[14] In the staff’s view, whether the use of actual fees violates the general prohibitions depends on all of the facts and circumstances of a specific advertisement, including, but not limited to, relevant disclosures. The staff’s view is that advisers may use various means to illustrate the effect of differences between actual fees and anticipated fees on performance.

Calculating Gross and Net Performance (posted Feb. 6, 2024)

Q: Must gross and net performance shown in an advertisement always be calculated using the same methodology and over the same time period?

A: Yes. Although the marketing rule does not prescribe any particular methodology or calculation for performance, the rule requires that any presentation of gross performance be accompanied by a presentation of net performance that has been calculated over the same time period and using the same type of return and methodology as the gross performance.^[15] In addition, net performance must be presented in a format designed to facilitate comparison with gross performance.^[16]

The staff understands that certain advisers to private funds may wish to present gross internal rate of return (“Gross IRR”) that is calculated from the time an investment is made (without reflecting fund borrowing or

“subscription facilities”)[[17](#)] and then present net internal rate of return (“Net IRR”) that is calculated from the time investor capital has been called to repay such borrowing.[[18](#)] In the staff’s view, if an adviser chooses to exclude the impact of such subscription facilities from the fund’s Gross IRR, it cannot then include them in the Net IRR that is presented to comply with section (d)(1) of the marketing rule. In other words, when an adviser advertises its private fund’s performance in terms of Gross IRR and Net IRR, presenting Gross IRR that is calculated without the impact of fund-level subscription facilities compared only to Net IRR that is calculated with the impact of fund-level subscription facilities would violate the marketing rule. The staff believes that such a presentation would result in IRR calculations being made across different time periods (e.g., Gross IRR calculations beginning when funds initially use their lines of credit to acquire investments, and Net IRR calculations beginning only once all capital commitments are called and the lines of credit are retired).

This practice would also result in the use of different methodologies being used for the Gross and Net IRRs (i.e., calculating performance without and with the impact of fund-level subscription facilities). Such a presentation would also violate the provision requiring presentations of performance in a format designed to facilitate comparison between net and gross performance.[[19](#)] Accordingly, in the staff’s view, if an adviser were to include in an advertisement the Gross IRR of a private fund calculated from before capital commitments are called, then it would need also to show the Net IRR calculated from the same time before capital commitments are called (i.e., including the effect of fund-level subscription facilities in its calculation).

Further, in the staff’s view, an adviser would violate the general prohibitions (e.g., Rule 206(4)-1(a)(1) and Rule 206(4)-1(a)(6)) if it showed only Net IRR that includes the impact of fund-level subscription facilities without including either (i) comparable performance (e.g., Net IRR without the impact of fund-level subscription facilities) or (ii) appropriate

disclosures describing the impact of such subscription facilities on the net performance shown. The staff believes that presenting only Net IRR that includes the impact of fund-level subscription facilities could mislead investors by suggesting that the fund's advertised performance is similar to the performance that the investor has achieved from its investment in the fund alone.

Testimonials and Endorsements – Disqualification for Self-Regulatory Organization Final Orders (posted Jan. 15, 2026)

Q: Would the staff recommend enforcement action if an investment adviser compensates a person for a testimonial or endorsement when that person was subject to the entry of a final order by a self-regulatory organization of the type described in section 203(e)(9) of the Advisers Act within the prior 10 years *and* that person has not been barred or otherwise suspended from acting in any capacity under the rules of that self-regulatory organization?

A: Rule 206(4)-1(b)(3) prohibits an investment adviser from compensating a person, directly or indirectly, for a testimonial or endorsement if the adviser knows, or in the exercise of reasonable care should know, that the person giving the testimonial or endorsement is subject to any disqualifying event (as defined in the marketing rule) within 10 years prior to the person disseminating an endorsement or testimonial. Such an event includes the entry of any final order by a self-regulatory organization (as defined in the Form ADV Glossary of Terms) based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

The definition of “disqualifying event” excludes a Commission order or opinion that does not bar, suspend, or prohibit the person subject to the order from acting in any capacity under the federal securities laws, provided that the person is in compliance with the terms of the opinion or order, and the advertisement includes certain disclosures about the disciplinary event. The Commission explained that it adopted this exclusion because, “when the Commission has issued an opinion or order with respect to a person’s disqualifying conduct but not barred or suspended the person or prohibited the person from acting in any capacity under the federal securities laws, it is appropriate to . . . permit such person to engage in activities related to compensated testimonials and endorsements,” provided that certain conditions are met.^[20]

Following this rationale, if a self-regulatory organization has issued an order with respect to a person’s disqualifying conduct but did not bar or suspend the person or prohibit such person from acting in any capacity in connection with that disqualifying conduct, the staff will not recommend enforcement action if such person engages in activities related to compensated testimonials or endorsements, provided the same conditions are satisfied.

Specifically, the staff would not recommend enforcement action to the Commission under Rule 206(4)-1(b)(3) if an investment adviser compensates a person for a testimonial or endorsement who the adviser knows, or in the exercise of reasonable care should know, was subject to the entry of a final order by a self-regulatory organization of the type described in section 203(e)(9) within 10 years prior to the person disseminating an endorsement or testimonial, provided that:

1. The sole reason the person is an ineligible person (as defined in the marketing rule) is the self-regulatory organization’s final order;
2. The self-regulatory organization did not expel or suspend the person from membership, bar or suspend the person from association with other members, or prohibit the person from acting in any capacity;

3. The person is in compliance with the terms of the self-regulatory organization's final order, including, but not limited to, paying disgorgement, prejudgment interest, civil or administrative penalties, and fines; and
 4. For a period of 10 years following the date of such final order, any advertisement containing the testimonial or endorsement discloses that the person providing the testimonial or endorsement is subject to a self-regulatory organization order, and includes the order, or a link to the order on the self-regulatory organization's website or other public disclosure system, if available.
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[1] Rule 206(4)-1(e)(6). The view of the staff expressed in this FAQ applies to the performance of an extract from a portfolio and of an extract from a composite of all related portfolios. The staff notes that performance extracted from a composite of portfolios may be considered hypothetical performance.

[2] Extracted performance means "the performance results of a subset of investments extracted from a portfolio." Rule 206(4)-1(e)(6). See section II.E.5 of the adopting release.

[3] In the case of performance extracted from a representative account, the staff believes that the adviser could satisfy the positions stated herein if the gross performance of the extract was accompanied by the gross and net performance of a composite aggregation of all of the representative account's related portfolios (rather than the gross and net performance of the total representative account from which the extract was extracted) presented in a manner consistent with positions stated herein.

[4] The 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.

[5] Such accompanying presentation of gross and net performance of the total portfolio would be subject to the requirements relating to performance in Rule 206(4)-1(d).

[6] In the staff's view, the gross and net performance of the total portfolio does not need to be presented on the same page of the advertisement as the extracted performance, provided that the presentation facilitates comparison between the gross and net performance of the total portfolio and the extracted performance. For example, 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.

[7] The staff notes, however, that in each case other than a private fund, Rule 206(4)-1(d)(2) requires that advertisements that include accompanying gross and net performance of the total portfolio present such performance over one-, five-, and ten-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.

[8] For the avoidance of doubt, the staff positions stated herein do 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), regardless of how such metrics are labelled in the advertisement. Whether a presentation of a characteristic

in an advertisement is subject to Rule 206(4)-1(d) depends on whether such characteristic is performance. The staff in this FAQ is not 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).

[9] The staff would view an advertisement as clearly identifying that the characteristic is calculated without the deduction of fees and expenses if, for example, it discloses that the characteristic 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.

[10] The view of the staff expressed in this FAQ also applies to characteristics calculated based on the performance of (i) a composite aggregation of related portfolios, (ii) a representative account; (iii) a subset of a portfolio (i.e., extracted performance), and (iv) a subset extracted from a composite aggregation of related portfolios, provided the characteristics are presented in a manner consistent with the FAQ. In the case of a characteristic calculated using a representative account, the staff believes that the adviser could satisfy the positions stated herein if the gross characteristic was accompanied by the gross and net performance of a composite aggregation of all of the representative account’s related portfolios (rather than the gross and net performance of the total representative account) in a manner consistent with the positions stated herein.

Such accompanying presentation of gross and net performance of the total portfolio would be subject to the requirements relating to performance in Rule 206(4)-1(d).

[11] In the staff’s view, gross and net performance of the total portfolio does not need to be presented on the same page of the advertisement as

the characteristic, provided that the presentation facilitates comparison between the gross and net performance of the total portfolio and the characteristic. For example, in the staff's view, presenting the gross and net performance of the total portfolio prior to the characteristic in the advertisement could also facilitate such comparisons and help ensure they are presented with at least equal prominence.

[12] The staff notes, however, that in each case other than a private fund, Rule 206(4)-1(d)(2) requires that advertisements that include accompanying gross and net performance of the total portfolio present such performance over one-, five-, and ten-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.

[13] Section II.E.1.d, footnote 590 of the adopting release. In the staff's view, Rule 206(4)-1(a)(3) and Rule 206(4)-1(a)(6), in particular, may be implicated by the use of actual fees in these circumstances.

[14] See Section II.B of the adopting release.

[15] Rule 206(4)-1(d)(1) prohibits an investment adviser from, directly or indirectly, disseminating any advertisement that includes "any presentation of gross performance, unless the advertisement also presents net performance: (i) with at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and (ii) calculated over the same time period, and using the same type of return and methodology, as the gross performance."

[16] *Id.*

[17] Fund-level subscription facilities include, for example, any subscription facilities, subscription line financing, capital call facilities, capital commitment facilities, bridge lines, or other indebtedness

incurred by a private fund, or on its behalf, that is secured by the unfunded capital commitments of the private fund's investors.

[18] A private fund's internal rate of return can be described, for example, as the discount rate that causes the net present value of all cash flows throughout the life of the private fund to be equal to zero.

[19] *Id.*

[20] See section II.C.4.e of the adopting release.

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