



CFA Institute[®]

Global Investment Performance Standards

RECONCILING THE GIPS[®] STANDARDS AND THE SEC MARKETING RULE

ORIGINALLY PUBLISHED: SEPTEMBER 2022

REVISED: SEPTEMBER 2023



CFA Institute

© 2022, 2023 CFA Institute. All rights reserved.
www.gipsstandards.org

GIPS® is a registered trademark owned by CFA Institute.

© 2022, 2023 CFA Institute. All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the copyright holder.

The content in this document is for informational purposes only. You should not construe any such information or other material as legal, tax, investment, financial, or other advice. You alone assume the sole responsibility for evaluating the merits and risks associated with the use of any information or other content on the CFA Institute website or the GIPS standards website before making any decisions based on such information or other content. You agree not to hold CFA Institute or its subsidiaries liable for any possible claim arising from any decision you make based on information or content made available to you through this document. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Revision History

Date	Description
September 2022	Originally Published
September 2023	Revised " Attribution " and " Investment-Level Returns " sub-sections (under Carve-Outs and Extracted Performance) and the corresponding " Impact to GIPS-Compliant Firms " in response to the SEC's January 2023 FAQ on net extracted performance.

Contents

Introduction	1
Terminology	1
Overview of the SEC Marketing Rule	2
SEC Marketing Rule General Prohibitions.....	2
Application to GIPS Reports.....	3
GIPS Advertising Guidelines.....	3
Comparison of the Requirements of the GIPS Standards and the Marketing Rule	4
Composite/Related Performance	4
Proprietary and Seed Capital Portfolios.....	5
Gross Returns.....	6
Net Returns	7
Non-Fee-Paying Portfolios	9
Conditions for Presenting Gross and Net Returns	10
Model Fees.....	12
Return Types	13
Time Periods	14
Timeliness of Returns.....	15
Length of Track Record	17
Benchmarks.....	18
Theoretical and Hypothetical Performance.....	19
Carve-outs and Extracted Performance.....	21
Portability.....	26
Additional Disclosures to Comply with the SEC Marketing Rule	28
Exhibit A – Sample GIPS Report	30

Introduction

This white paper addresses the differences between the Global Investment Performance Standards (GIPS®) and the Securities and Exchange Commission (“SEC” or the “Commission”) Marketing Rule (“Marketing Rule”). The United States Investment Performance Council (“USIPC”), the US Sponsor of the GIPS standards, worked together with CFA Institute staff to create this white paper. The GIPS standards can be found at www.gipsstandards.org.

The Marketing Rule addresses requirements that SEC-registered advisers must follow when marketing their services to clients and investors. It amends rule 206(4)-1 (the “advertising rule”) of the Investment Advisers Act of 1940 (“Advisers Act”) and also replaces rule 206(4)-3 (the “solicitation rule”) of the Advisers Act. The Marketing Rule and the accompanying Adopting Release were issued in December 2020, with an effective date of May 4, 2021. Investment advisers must comply with the Marketing Rule by November 4, 2022 (the compliance date).

There are many similarities between the requirements of the GIPS standards and the performance requirements of the Marketing Rule. Firms that claim compliance with the GIPS standards will have an easier time complying with the Marketing Rule, given that the adviser will already have created composites and calculated returns that in most cases would meet the requirements of the Marketing Rule. To highlight how the Marketing Rule will affect GIPS-compliant firms, we will primarily focus on the differences between the Marketing Rule and the GIPS standards. This paper does not address solicitation requirements of the Marketing Rule.

This paper is not intended to be a comprehensive list of all regulatory or GIPS standards requirements and does not constitute legal advice. This white paper reflects the views of the USIPC and CFA Institute staff as of September 2023. The rules and guidance described in this paper are subject to change, and this paper may or may not be subsequently updated to reflect any changes. This paper is intended as a resource for those registered investment advisers that claim compliance with the GIPS standards; it is not authoritative GIPS standards guidance.

Terminology

Some terms used in the GIPS standards are different from the terms used in the Marketing Rule, as follows:

GIPS standards	SEC Marketing Rule
Carve-out	Extract
Composite	Composite aggregation
Firm	Adviser
Investment management fees	Advisory fees
Portfolio	Account
Returns	Performance
Theoretical performance	Hypothetical performance
Transaction costs	Transaction fees and expenses
Underlying pooled fund	Underlying investment vehicle

This paper generally uses the terms that are consistent with the respective source.

Overview of the SEC Marketing Rule

The Marketing Rule governs an investment adviser's advertisements for certain types of investment vehicles, as follows:

- Scoped in: An investment adviser's investment advisory accounts and communications directed to investors in 3(c)(1) and 3(c)(7) funds (together, "private funds")
- Scoped out: Registered Investment Companies (RICs), Business Development Companies (BDCs), 3(c)(5) funds, 3(c)(11) funds, and non-US funds

An advertisement is any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that

- offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser, or
- offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser.

Advertisements do not include:

- extemporaneous, live, oral communications;
- information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or
- a communication that includes hypothetical performance that is provided
 - in response to an unsolicited request for such information from a prospective or current client or investor in a private fund advised by the investment adviser or
 - to a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication.

Advertisements also include certain endorsements and testimonials, but these are outside the scope of this paper.

The Adopting Release states that if an adviser maintains a database of performance-related information inserts or tables that it uses in otherwise customized investor communications, the adviser must treat the duplicated inserts as advertisements subject to the rule. Therefore, if some portions of marketing materials are customized while others are not, the portions of the marketing materials that have not been customized may be considered advertisements, even if the marketing materials are used only with prospects in a one-on-one communication.

SEC Marketing Rule General Prohibitions

Seven general prohibitions apply to all advertisements. These prohibitions are drawn from historic anti-fraud principles under the Federal securities laws and are tailored specifically to the type of communications that are within the scope of the Marketing Rule. The general prohibitions provide advisers with a principles-based framework to assess advertisements and provide greater clarity, compared to the anti-fraud provisions of the Advisers Act, on marketing practices that are likely misleading.

In applying the general prohibitions, an adviser should consider the facts and circumstances of each advertisement. The nature of the audience to which the advertisement is directed is a key factor in determining how the general prohibitions should be applied. For instance, the amount and type of information that may need to be included in an advertisement directed at retail investors may differ from the information that may need to be included in an advertisement directed at sophisticated institutional investors. There are seven general prohibitions. In an advertisement, an adviser may not:

- include any untrue statement or omit a material fact;
- include a material statement of fact that the adviser cannot substantiate;
- include information that would likely cause an untrue or misleading implication or inference;
- discuss potential benefits to clients without providing fair and balanced treatment of any material risks or limitations;
- include specific investment advice that is not fair and balanced;
- include or exclude performance results, or time periods, in a manner that is not fair and balanced; or
- otherwise be materially misleading.

Application to GIPS Reports

Firms that claim compliance with the GIPS standards are required to make every reasonable effort to provide a GIPS Report to certain prospects. A GIPS Report includes all of the information required by the GIPS standards for a specific composite or pooled fund. A GIPS Report will typically include 10 years of performance and other numerical information, such as total firm assets and the number of portfolios in the composite, and a series of disclosures. A sample GIPS Report is included as Exhibit A.

GIPS Reports are standardized marketing materials that typically are not tailored to each individual prospect and generally would be considered an advertisement for SEC purposes. This is the case whether the GIPS Report is provided on a standalone basis or is included as part of other materials, such as a pitch book. Firms will need to determine if they will provide the GIPS Report as a standalone document or if the GIPS Report will be provided along with other marketing materials. If the firm provides the GIPS Report as a standalone document, it will need to include any information required by the Marketing Rule within the GIPS Report itself. If the GIPS Report is provided along with other marketing materials, then the information required by the Marketing Rule may be provided outside of the GIPS Report.

GIPS Advertising Guidelines

The term “GIPS Advertisement” refers to an advertisement that adheres to the requirements of the GIPS Advertising Guidelines. For the GIPS Advertising Guidelines, an advertisement includes any materials that are distributed to or designed for use in newspapers, magazines, firm brochures, pooled fund fact sheets, pooled fund offering documents, letters, media, websites, or any other written or electronic material distributed to more than one party, and there is no contact between the firm and the reader of the advertisement. One-on-one presentations and individual client reporting are not considered advertisements.

A GIPS Advertisement will be considered an advertisement under the Marketing Rule. However, because GIPS Advertisements are not widely used, this paper does not address GIPS Advertisements.

Comparison of the Requirements of the GIPS Standards and the Marketing Rule

Composite/Related Performance

GIPS Standards

When marketing performance of a strategy, firms are required to use composite performance. A composite is defined as an aggregation of one or more portfolios that are managed according to a similar investment mandate, objective, or strategy. A composite must include all portfolios that meet the composite definition.

SEC Marketing Rule

The Marketing Rule takes a different approach. When presenting performance of a strategy, an adviser may present related performance.

Related performance is the performance results of one or more related portfolios, either on a portfolio-by-portfolio basis or as a composite aggregation, of all portfolios falling within stated criteria. A related portfolio is a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement. The Adopting Release states that firms may rely on the GIPS standards composite construction criteria to identify all related portfolios.

If an investment adviser presents related performance, it may exclude from the related performance one or more related portfolios as long as:

- performance is not materially higher than if all related portfolios had been included, and
- the exclusion of any related portfolio does not affect the time periods presented.

An adviser may meet the related performance requirements of the rule by presenting performance of a representative account, as long as the representative account performance is not materially higher than if all related portfolios had been included and it does not affect the time periods presented.

The Adopting Release also clarifies that an adviser may present the results of a representative account (such as a flagship fund) or a subset of related portfolios alongside the required related performance as long as the advertisement would otherwise comply with the general prohibitions. In other words, an adviser can present a representative account alongside the required related performance without meeting the two tests (performance is not materially higher than if all related portfolios had been included, and the exclusion of any related portfolio does not affect the time periods presented), as long as the advertisement would otherwise comply with the general prohibitions. When the required related performance is also presented in the advertisement, the concerns regarding cherry-picking a particular portfolio are mitigated.

Reconciliation

A GIPS-compliant firm will meet the related performance requirements of the Marketing Rule because it uses composite performance that includes all portfolios that meet the composite definition. The composite definition is the “stated criteria” for identifying related portfolios, as specified by the Marketing Rule.

GIPS Standards	SEC Marketing Rule
Composites are required when marketing strategy performance.	Related performance may be composite performance or performance of each related portfolio.
A composite must include all portfolios that meet the composite definition.	Related performance may exclude related portfolios as long as it is not materially higher than if all related portfolios had been included, and it does not affect the time periods presented.

Impact to GIPS-Compliant Firms

None.

Proprietary and Seed Capital Portfolios

GIPS Standards

There are no requirements specifically addressing the inclusion of proprietary or seed capital portfolios in composites. Proprietary and seed capital portfolios may be included in a composite if they are managed consistent with the composite's investment mandate, objective, or strategy.

SEC Marketing Rule

An adviser must invest an amount of seed capital that is sufficient to demonstrate the strategy to investors. If the seed capital amount is not sufficient to demonstrate the strategy to investors, the firm must treat this performance consistent with the requirements for using hypothetical performance. (See discussion of hypothetical performance on page 19.)

Reconciliation

The SEC Marketing Rule is stricter than the GIPS standards because a firm must consider the amount of capital it is investing when seeding a new strategy and must ensure the amount is sufficient to demonstrate the strategy.

GIPS Standards	SEC Marketing Rule
There are no requirements specifically addressing the inclusion of proprietary or seed capital portfolios in composites.	An adviser must invest an amount of seed capital that is sufficient to demonstrate the strategy to investors.
	If seed capital amount is not sufficient to demonstrate the strategy to investors, it would be subject to the additional protections that apply to advertisements containing hypothetical performance.

Impact to GIPS-Compliant Firms

Firms should take a fresh look at composites that include seed or proprietary portfolios to ensure that these portfolios are of a sufficient size to demonstrate the strategy. If a firm determines a seed portfolio is not of a sufficient size, it could change the start date of the composite and exclude the seed portfolio. The firm could instead leave the composite as is and treat it as performance that is subject to the additional protections for hypothetical performance. Firms should pay particular attention to those composites that have a minimum size for composite inclusion and were started with a seed portfolio.

Gross Returns

GIPS Standards

A gross return must reflect the deduction of transaction costs. For portfolios invested in underlying pooled funds, gross returns must also reflect the deduction of all fees and expenses, including administrative fees, incurred by these pooled funds, with one exception: When the firm controls the investment management fees of the underlying pooled funds, the firm may calculate gross returns that do not reflect the deduction of the underlying pooled fund investment management fees.

A pure gross return does not reflect the deduction of transaction costs. Pure gross returns may be included in GIPS Reports as supplemental information.

SEC Marketing Rule

Gross performance is the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) before 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.

Gross returns do not have to reflect the deduction of transaction costs. For portfolios invested in an underlying investment vehicle, gross returns are not required to reflect the deduction of any fees and expenses paid by the underlying investment vehicle. However, gross returns may reflect the deduction of transaction costs as well as the fees and expenses paid by underlying investment vehicles.

If an investment adviser presents gross returns that do not reflect the deduction of transaction costs, the investment adviser should disclose this fact.

Reconciliation

The GIPS standards are stricter than the Marketing Rule with respect to calculating gross returns. While the GIPS standards require the deduction of transaction costs when calculating a gross return, the Marketing Rule does not

When a portfolio invests in underlying pooled funds, the GIPS standards require firms to deduct the underlying pooled fund fees and expenses when calculating gross returns, with one exception. When the firm controls the investment management fees of the underlying pooled fund, gross returns do not need to reflect the deduction of the underlying pooled fund investment management fees. The Marketing Rule does not require the deduction of underlying pooled fund fees and expenses when calculating a portfolio gross return.

Neither the Marketing Rule nor the GIPS standards require firms to present pure gross returns, but both permit pure gross returns as long as they are accompanied by appropriate disclosures.

GIPS Standards	SEC Marketing Rule
Gross returns must reflect the deduction of transaction costs.	Gross returns are not required to reflect the deduction of transaction costs.
If the portfolio invests in underlying pooled funds, gross returns must reflect the deduction of all fees and expenses incurred by these pooled funds.	If the portfolio invests in underlying pooled funds, gross returns are not required to reflect the deduction of all fees and expenses incurred by these pooled funds.
Pure gross returns may be included in GIPS Reports as supplemental information.	Pure gross returns may be presented as gross returns, but the adviser should disclose this fact.

Impact to GIPS-Compliant Firms

None. Gross returns that meet the calculation requirements of the GIPS standards will meet the requirements of the Marketing Rule.

Net Returns

GIPS Standards

The GIPS standards differentiate net returns for composite and pooled funds.

Composite net returns must reflect the deduction of transaction costs and investment management fees. If portfolios in the composite invest in underlying pooled funds, net returns must also reflect the deduction of all fees and expenses, including administrative fees, incurred by these pooled funds.

Pooled fund net returns that are included in a GIPS Pooled Fund Report must reflect the deduction of transaction costs, investment management fees, and all other fees and expenses charged to the pooled fund. For pooled funds invested in underlying pooled funds, net returns must also reflect the deduction of all fees and expenses, including administrative fees, incurred by these pooled funds.

SEC Marketing Rule

Net performance is defined as the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) after 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. These fees and expenses include, if applicable, advisory fees, advisory fees paid to underlying investment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser. Net performance must also reflect the deduction of custody fees if the client or investor pays the adviser, rather than a third party, for custodial services. Whether other administrative fees and expenses must be deducted depends on the facts and circumstances. Net performance is not required to reflect the deduction of administrative fees paid by underlying investment vehicles.

While net performance is not required to reflect the deduction of transaction costs or administrative fees of underlying investment vehicles, if gross returns reflect the deduction of these items, then they should also be deducted when calculating net returns.

Reconciliation

Composites

Similar to gross returns, the GIPS standards are stricter with respect to calculating net returns. The GIPS standards require the deduction of transaction costs while the Marketing Rule does not. When portfolios invest in underlying pooled funds, the GIPS standards require the deduction of all underlying pooled fund fees and expenses when calculating net returns. The Marketing Rule requires the deduction of investment management fees paid by underlying pooled funds but does not require the deduction of administrative expenses paid by underlying pooled funds. However, the Marketing Rule states that if gross returns reflect the deduction of transaction costs and underlying pooled fund fees and expenses, then they should also be deducted when calculating net returns.

The SEC Marketing Rule is stricter than the GIPS standards with respect to custody fees. The GIPS standards do not require the deduction of any custody fees when calculating composite net returns, but the Marketing Rule requires firms to deduct custody fees when they are paid to the investment adviser.

GIPS Standards	SEC Marketing Rule
Composite net returns must reflect the deduction of transaction costs and investment management fees.	Net performance must reflect the deduction of investment management fees but does not require the deduction of transaction costs.
Composite net returns are not required to reflect the deduction of custody fees.	Net performance must reflect the deduction of custody fees if they are paid to the investment adviser.
If portfolios in the composite invest in underlying pooled funds, net returns must reflect the deduction of all fees and expenses incurred by these pooled funds.	Net returns must reflect the deduction of advisory fees paid by underlying investment vehicles, but not administrative fees.

Pooled Funds

The Marketing Rule does not differentiate net returns for pooled funds from net returns for composites. The GIPS standards do differentiate net returns for pooled funds and composites. When calculating pooled fund net returns that will be included in a GIPS Pooled Fund Report, the GIPS standards require the deduction of all fees and expenses, including administrative fees, incurred by the pooled fund. Net returns that are calculated for GIPS compliance purposes will meet the calculation requirements of the Marketing Rule.

GIPS Standards	SEC Marketing Rule
Pooled fund net returns included in a GIPS Pooled Fund Report must reflect the deduction of transaction costs, investment management fees, and all other fees and expenses.	Net performance must reflect the deduction of investment management fees but does not require deduction of transaction costs. Whether administrative fees and expenses must be deducted depends on the facts and circumstances.
If the pooled fund invests in underlying pooled funds, net returns must reflect the deduction of all fees and expenses incurred by these pooled funds.	Net returns must reflect the deduction of advisory fees paid by underlying investment vehicles to the investment adviser, but not administrative fees.

Impact to GIPS-Compliant Firms

Composites

Firms that provide custody services will need to recalculate net returns to reflect the deduction of custody fees paid to the firm, if these custody fees are not already deducted.

Pooled Funds

None

Non-Fee-Paying Portfolios

GIPS Standards

Non-fee-paying portfolios are those portfolios that pay no investment management fee. Portfolios that pay a minimal investment management fee, such as for an affiliated account, should also be considered non-fee-paying portfolios. Firms may choose to include non-fee-paying portfolios in a composite or may exclude non-fee-paying portfolios from a composite. This decision is made on a composite-specific basis.

If a composite includes non-fee-paying portfolios, and net returns are calculated using actual investment management fees, the percentage of composite assets represented by non-fee-paying portfolios as of each annual period end must be presented. For pooled funds that have a partnership structure, where some assets may be non-fee-paying (e.g., General Partner assets), a firm must disclose on which assets the net returns are calculated.

SEC Marketing Rule

When calculating net returns, advisers generally should apply a model fee to non-fee-paying portfolios and portfolios with reduced rates that are unavailable to unaffiliated clients.

Reconciliation

In this case, the Marketing Rule is stricter than the GIPS standards. The GIPS standards allow firms to calculate net returns that reflect portfolios that pay investment management fees of \$0, as long as firms disclose the percentage of assets that are non-fee-paying. The Marketing Rule states that investment advisers should apply a model fee to the non-fee-paying assets.

GIPS Standards	SEC Marketing Rule
Net returns for non-fee-paying portfolios may reflect the deduction of actual investment management fees, which may be \$0.	Net returns for non-fee-paying portfolios generally should reflect the deduction of a model fee.

Impact to GIPS-Compliant Firms

If a composite includes non-fee-paying or minimal fee-paying portfolios, and net returns are calculated using actual fees, a model fee should be applied to these portfolios. If a pooled fund's net return is calculated using non-fee-paying or minimal-fee-paying assets, and net returns are calculated using actual fees, a model fee should be applied to these assets. A firm could also choose not to use actual fees to calculate net return and instead could apply a model fee to the composite or pooled fund.

These model fees should be applied for all periods for which non-fee-paying assets are reflected in the net returns. A firm will not need to treat these changed net returns as an error and instead can view this as a change in a policy. While firms will not be required to distribute the changed GIPS Reports, they should, however, disclose this change.

Conditions for Presenting Gross and Net Returns

GIPS Standards

In a GIPS Report, firms may present gross returns only, net returns only, or both gross and net returns, with one exception. For wrap fee composites, firms must present net returns that reflect the deduction of the entire wrap fee that a prospect would pay.

The GIPS standards recommend presenting both gross and net returns, but there are no conditions for presenting gross returns.

SEC Marketing Rule

The SEC Marketing Rule uses the term "performance," and throughout the Adopting Release it uses the terms performance, performance results, performance returns, and returns. For comparability with the GIPS standards, we use the term returns when discussing the SEC Marketing Rule requirements.

When gross returns are presented, net returns must be:

- presented with at least equal prominence to gross returns,
- in a format designed to facilitate comparison with gross returns,
- calculated using the same type of returns and methodology as the gross returns, and
- calculated for the same time periods as the gross returns.

Reconciliation

The Marketing Rule requires an investment adviser to present net returns in all advertisements. An investment adviser may present gross returns in addition to net returns, but doing so will be subject to certain conditions.

An adviser may not present only gross returns in an advertisement.

When both gross and net returns are presented, firms must ensure that the following conditions are met:

- Gross and net returns are presented with equal prominence and in a format designed to facilitate comparison. If a firm includes gross and net return columns side-by-side in a GIPS Report, this should be sufficient.
- Gross and net returns are calculated using the same type of return and methodology. The difference between an adviser’s gross and net returns should reflect the effect of the fees charged and not the use of different methodologies to calculate gross and net returns.
- Gross and net returns are calculated over the same time period. For example, if a firm includes annualized gross returns in addition to the required annual returns in a GIPS Report, it will need to present annualized net returns as well.

While the GIPS standards do not have conditions for presenting gross returns, the spirit of the GIPS standards aligns with the conditions for presenting gross returns in the Marketing Rule.

GIPS Standards	SEC Marketing Rule
Do not require net returns, except for wrap composites.	Requires net returns.
Recommend presenting both gross and net returns, but there are no conditions for presenting gross returns.	May present gross returns in addition to net returns if net returns are: <ol style="list-style-type: none"> 1. Presented with at least equal prominence to gross returns. 2. In a format designed to facilitate comparison with gross returns. 3. Calculated over the same time period as gross returns. 4. Calculated using the same type of return and methodology as gross returns.

Finally, we believe that these requirements do not extend to risk or risk-adjusted measures, such as standard deviation or Sharpe ratios, because these measures are not considered performance results of a portfolio. For example, firms are required to include composite and benchmark 3-year annualized standard deviation as of each annual period end in GIPS Composite Reports. Common practice is to use composite monthly gross returns in these calculations, and we believe that this practice is appropriate and does not violate the SEC Marketing Rule requirements.

Impact to GIPS-Compliant Firms

Firms must ensure that their GIPS Reports include net returns for the same periods as gross returns and that gross and net returns are shown with equal prominence and in a format designed to facilitate comparison. Firms should also ensure that the gross and net return methodologies are consistent such that the difference between net and gross returns reflects the impact of fees and not calculation methodology differences.

Model Fees

GIPS Standards

A firm may use actual or model investment management fees to calculate net returns. If a model fee is used, then two conditions must be met:

- Net returns calculated using a model fee must be equal to or lower than returns that would have been calculated if actual investment management fees were used; and
- The model investment management must be appropriate to the prospective client or investor.

Net returns calculated using a model fee that do not generate returns that are equal to or lower than returns that would have been calculated if actual investment management fees were used may be included in a GIPS Report only as a second series of net returns as supplemental information.

SEC Marketing Rule

The Marketing Rule also allows an investment adviser to use actual or model investment management fees to calculate net returns. If a model fee is used, net returns must reflect one of the following two options:

- Net returns calculated using a model fee must be equal to or lower than returns that would have been calculated if actual investment management fees had been deducted; or
- Net returns reflect the deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the advertisement is disseminated.

When discussing the Marketing Rule's first model fee option, the Adopting Release states, "When an adviser advertises net performance that is no higher than if deducting actual fees, there appears to be little chance of misleading the audience into believing that investors received better returns than they actually did." Footnote 590, however, states, "If 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." Therefore, the investment adviser should consider the general prohibitions when actual fees are lower than the proposed fees.

When discussing the Marketing Rule's second model fee option, footnote 593 in the Adopting Release states that, "net performance that reflects a model fee that is not available to the intended audience is not permitted under the final rule's second model fee provision."

Reconciliation

Since GIPS-compliant firms that use model fees must always calculate net returns that are equal to or lower than net returns calculated using actual fees, they will automatically meet the first option provided in the Marketing Rule. However, firms must also consider the general prohibitions when calculating net returns to ensure they are not misleading. If using model fees, the model fee must be appropriate to prospects. If using actual fees, the firm should ensure that the net returns are not misleading, as would be the case if actual fees are materially different from the fees that a prospect would be charged.

If a firm uses the Marketing Rule’s second option to calculate net returns that reflect the deduction of a model fee that is equal to the highest fee relevant to the intended audience, and the returns are higher than the returns that would have been calculated using actual fees, the firm may be limited in its ability to distribute the marketing materials. If these net returns appear in marketing materials that are outside of a GIPS Report, then these materials may be used only for the intended audience. If these net returns are included in the GIPS Report as a second series of net returns, they must accompany net returns that are calculated using either actual fees or a model fee that generates returns that are no higher than actual net returns. Because these net returns are included in a GIPS Report along with net returns that meet the requirements of the GIPS standards, the inclusion of these net returns should not restrict the use of the GIPS Report.

GIPS Standards	SEC Marketing Rule
Net returns calculated using model fees must be equal to or lower than net returns calculated using actual fees.	Net returns calculated using a model fee must: <ol style="list-style-type: none"> 1. be no higher than net returns calculated using actual fees, or 2. reflect the deduction of a model fee that is the highest fee relevant to the intended audience.
Net returns calculated using model fees that are not equal to or lower than net returns calculated using actual fees may be presented in a GIPS Report as supplemental information.	Net returns that reflect the deduction of a model fee that is the highest fee relevant to the intended audience may only be used for the intended audience.

Impact to GIPS-Compliant Firms

None.

Return Types

GIPS Standards

A firm must present time-weighted returns for all composites and pooled funds unless certain criteria are met, in which case the firm may instead present money-weighted returns. A firm may present money-weighted returns instead of time-weighted returns only when the firm controls the external cash flows into the portfolios in the composite or the pooled fund and when each of the portfolios in the composite has, or the pooled fund has, at least one of the following characteristics:

- It is closed-end.
- It is fixed life.
- It has a fixed commitment.
- Illiquid investments are a significant part of the composite or pooled fund investment strategy.

SEC Marketing Rule

Advisers may use the type of returns appropriate for their strategies provided that the usage does not violate the Marketing Rule’s general prohibitions.

Reconciliation

In this case, the GIPS standards are stricter than the Marketing Rule because they require time-weighted returns unless certain conditions are met, in which case money-weighted returns may be used. The Marketing Rule does not require any specific return types.

GIPS Standards	SEC Marketing Rule
Time-weighted returns are required unless certain conditions are met, in which case the firm may instead present money-weighted returns.	No return type is specified.

Impact to GIPS-Compliant Firms

None.

Time Periods

GIPS Standards

The time periods that must be presented in a GIPS Report depend on the type of returns that are presented. Annual time periods are required when presenting time-weighted returns, and a single since-inception annualized return is required when presenting money-weighted returns.

SEC Marketing Rule

An adviser must present 1-, 5-, and 10-year returns (prescribed time periods) in all advertisements, but this requirement does not apply to private funds. If the relevant portfolio (or portfolios) did not exist for a particular prescribed time period, then an adviser must also present performance for the life of the portfolio. It is not specified whether cumulative or annualized returns should be used for prescribed time periods, so either return type should be permitted.

Reconciliation

The GIPS standards require different time periods based on return type. For time-weighted returns, annual returns must be presented. For money-weighted returns, a since inception annualized return must be presented. The Marketing Rule does not distinguish time periods by return type. Instead, all advertisements (excluding those for private funds), must include 1-, 5-, and 10-year returns. If the portfolio (or portfolios) did not exist for one of the prescribed time periods, then the firm must also present returns for the life of the portfolio.

GIPS Standards	SEC Marketing Rule
<ul style="list-style-type: none">For time-weighted returns, annual returns are required.For money-weighted returns, a single annualized since-inception money-weighted return is required.	<ul style="list-style-type: none">Must present 1-, 5-, and 10-year returns (prescribed time periods).Must also present performance for the life of the portfolio if it did not exist for one of the prescribed time periods.These rules are not required for private funds.

Impact to GIPS-Compliant Firms

Assuming a GIPS Report is a standalone advertisement for SEC purposes, the firm must add 1-, 5-, and 10-year returns for each series of returns included in the GIPS Report. If the composite has not existed for one of the prescribed time periods, a since-inception return must also be included. Firms will also need to include benchmark returns for the prescribed periods. If a GIPS Report is not treated as a standalone advertisement, the firm would not have to add the 1-, 5-, and 10-year returns to the GIPS Report and could instead include these returns in materials that accompany the GIPS Report. These returns are not required for GIPS Pooled Fund Reports for private funds.

Timeliness of Returns

GIPS Standards

GIPS Reports that include time-weighted returns must include returns for annual periods. While the annual period is not required to be based on the calendar year, in the US it is common practice for annual returns in GIPS Reports to be calendar year returns. GIPS Reports that include money-weighted returns must include the annualized since-inception money-weighted returns through the most recent annual period end. GIPS Reports may also include more current returns, such as year-to-date returns, but this is not required. Firms must update GIPS Reports to include returns through the most recent annual period end within 12 months of that annual period end. As an example, suppose that a firm presents calendar year returns in GIPS Reports. GIPS Reports with information through 31 December 2021 must be available no later than 31 December 2022.

SEC Marketing Rule

The prescribed time periods must end on a date that is no less recent than the most recent calendar year-end.

In response to questions asking how soon after year-end a firm must update an advertisement, the SEC issued an FAQ to address the fact that firms will not have year-end performance ready immediately after year-end. The FAQ states that 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. Advisers would generally, therefore, be expected to update advertisements to include performance through 31 December by the end of January.

Additionally, the Adopting Release states that performance that is more current than performance through the most recent annual year-end may be required, as follows:

“Depending on the facts and circumstances, an adviser may be required to present performance results as of a more recent date than the most recent calendar year-end to comply with the rule’s general prohibitions. For example, it could be misleading for an adviser to present performance returns as of the most recent calendar year-end if more timely quarter-end performance is available and events have occurred since that time that would have a significant negative effect on the adviser’s performance. If more recent quarter-end performance data is not available, the adviser should include appropriate disclosure about the performance presented in the advertisement.”

Reconciliation

The GIPS standards allow firms 12 months to update GIPS Reports to include performance through the most recent annual period end. The SEC FAQ indicates that firms generally would need to update performance within one month of calendar year-end. However, this applies only to performance for the prescribed time periods. Updating performance so quickly after year end could be challenging for some firms, particularly for those firms that manage alternative investments and place reliance on valuation information received from external managers. Also, while the Marketing Rule addresses only performance, the GIPS standards require other information beyond performance to be included in GIPS Reports, such as total firm assets. For large, complex firms, it often takes much more than 30 days to calculate total firm assets. Finally, while verification is not a requirement for finalizing GIPS Reports, many firms consider performance to be preliminary until the verification is completed. For all of these reasons, most firms will not want to update their GIPS Reports within 30 days after year-end. However, even though the GIPS Report may not be updated within 30 days after year end, if the GIPS Report is a standalone advertisement for a composite, then the firm will need to include returns for the 1-, 5-, and 10-year time periods as of the most recent calendar year-end. For example, in January 2022, a GIPS Report could include annual returns through December 31, 2020, while a table with the prescribed time periods could include 1-, 5-, and 10-year annualized returns through December 31, 2021.

The GIPS standards permit firms to identify information as “preliminary” in a GIPS Report as long as doing so would not result in performance that is false or misleading. However, if any changes in performance or other information in a GIPS Report are made when performance is finalized, the changes would be subject to the firm’s error correction policy and procedures.

For GIPS Reports that include time-weighted returns, the GIPS standards permit firms to include only annual returns in GIPS Reports. Year-to-date returns are not required to be included in GIPS Reports. While firms calculate and report year-to-date returns, it is typically done outside of GIPS Reports. If a firm treats GIPS Reports as standalone advertisements, it may need to update the GIPS Report to include year-to-date returns.

GIPS Standards	SEC Marketing Rule
Performance as of the most recent annual period end, updated within 12 months of the annual period end.	Performance (for prescribed time periods) as of the most recent calendar year-end, updated generally within 1 month of the calendar year-end.
Year-to-date performance is not required.	It could be misleading to exclude more recent (e.g., YTD) performance.

Impact to GIPS-Compliant Firms

Firms will need to determine when they will update GIPS Reports. A key consideration is whether or not the firm treats the GIPS Report as a standalone advertisement. If the firm treats the GIPS Report for a composite as a standalone advertisement, it will need to include the 1-, 5-, and 10-year returns. These returns must end on a date that is no less recent than the most recent calendar year-end. Firms will generally have one month after the calendar year-end to update the 1-, 5-, and 10-year returns. Firms may also need to include year-to-date returns in GIPS Reports when not doing so would be misleading.

Another approach is to not update GIPS Reports and instead provide the returns required by the Marketing Rule outside of the GIPS Reports. This information could be an exhibit to the GIPS Report or could be included in other marketing materials that are provided along with the GIPS Report. The GIPS Report would not need to be updated to include the most recent calendar year-end return within one month of the calendar year end, nor would it need to be updated throughout the year.

Length of Track Record

GIPS Standards

When initially attaining compliance with the GIPS standards, a firm must attain compliance on a firmwide basis for at least five years. If the firm has been in existence for less than five years, then the firm must attain compliance for the period since the firm's inception. Assuming a firm initially claims compliance for the minimum five-year time period, it is required to present five years of GIPS-compliant performance. If the composite or pooled fund has been in existence less than five years, then the firm must present performance since inception of the composite or pooled fund. Once a firm has claimed compliance and presented at least a 5-year (or since inception if less than 5 years) track record in GIPS Reports, it must then build towards presenting a 10-year track record.

If a firm initially claims compliance for a longer period than 5 years, the firm must present a track record for the entire period for which it claims compliance, or for at least 10 years if the firm claims compliance for a period longer than 10 years.

Firms may not present non-compliant performance in GIPS Reports for periods after the minimum effective compliance date. For most composites and pooled funds, the minimum effective compliance date is 1 January 2000.

SEC Marketing Rule

Because a firm has to present performance for the prescribed time periods (1-, 5-, and 10-years), the firm must present a 10-year track record, if it exists. If the track record has not existed for at least 10 years, then the firm must present a since-inception track record. Firms are not required to present performance for prescribed time periods for private funds.

Reconciliation

For firms that claim compliance with the GIPS standards for at least 10 years, the GIPS standards require a 10-year track record. The Marketing Rule also requires a 10-year track record for all advertisements, except those for private funds. For firms that have claimed compliance with the GIPS standards for less than 10 years, the GIPS standards require the firm to present performance for the period for which the firm claims compliance, and only for that period. The firm may not present performance for periods for which the firm does not claim compliance with the GIPS standards within a GIPS Report. As an example, assume Firm A has been in existence for 20 years, but it currently claims compliance for the past 7 years. Firm A would present a 7-year track record in its GIPS Reports. The Marketing Rule, however, requires the adviser to show 10 years of performance if it exists. Because firms also have to comply with laws and regulations in addition to the GIPS standards, firms that have a longer track record than the track record that is presented in their GIPS Reports, and do not yet have a 10-year compliant track record, will need to determine how they will disclose performance for the prescribed 10-year time period, or for the period since inception.

GIPS Standards	SEC Marketing Rule
Requires firms to initially bring 5 years (or since inception) into compliance and then build up to a 10-year-compliant track record.	<ul style="list-style-type: none"> • Requires a 10-year track record (or since inception if the track record has existed for less than 10 years). • Not required for private funds.

Impact to GIPS-Compliant Firms

Firms that claim compliance with the GIPS standards for less than 10 years but have a track record that is longer than what was brought into compliance will need to present performance that links non-GIPS-compliant performance to GIPS-compliant performance. A firm has two options:

1. Include the linked performance in the GIPS Report and disclose the conflict between the GIPS standards and regulations. Firms may do this because they must comply with laws and regulations regarding the calculation and presentation of performance.
2. Include the linked performance in materials that are part of the advertisement but outside of the GIPS Report.

Benchmarks

GIPS Standards

The GIPS standards require returns of an appropriate benchmark to be included in all GIPS Reports, with one exception. If a firm determines that no appropriate benchmark for the composite or pooled fund exists, the firm is not required to present benchmark returns but must disclose why no benchmark is presented.

SEC Marketing Rule

The Marketing Rule does not explicitly require benchmark returns in advertisements. However, one of the General Prohibitions states that the failure to disclose how material market conditions affect the performance results would be misleading. This language carries forward a long-standing disclosure from the Clover Capital No-Action Letter, which has been widely interpreted as requiring benchmark returns in advertisements.

Reconciliation

While the Marketing Rule does not explicitly require benchmark returns, a benchmark is a way to disclose how market conditions have affected the performance results. In response to a comment from CFA Institute that suggested requiring benchmark returns in advertisements, the Adopting Release states that the SEC does not believe that it is necessary to prescribe such disclosures. Instead, the decision to include or exclude benchmark returns in an advertisement should be left to the discretion of the adviser, and is also subject to the general prohibitions of the final rule and the general anti-fraud provisions of the Federal securities laws. We believe that it would be difficult for a firm to justify why benchmark returns are not included in an advertisement when an appropriate benchmark exists.

GIPS Standards	SEC Marketing Rule
Returns of an appropriate benchmark are required. If there is no appropriate benchmark, this must be disclosed.	Failure to disclose how material market conditions affect the performance results would be misleading.

Impact to GIPS-Compliant Firms

If a firm determines that no appropriate benchmark exists for a composite or pooled fund and the GIPS Report is treated as a standalone advertisement, the firm should determine if it needs to have a disclosure addressing how material market conditions affected the performance results shown, if applicable.

Theoretical and Hypothetical Performance

GIPS Standards

Theoretical performance is performance that is not derived from a portfolio or composite with actual assets invested in the strategy presented. Theoretical performance includes model, backtested, hypothetical, simulated, indicative, ex ante, and forward-looking performance.

The GIPS standards do not differentiate between who can and cannot receive theoretical performance.

SEC Marketing Rule

Hypothetical performance means performance results that were not actually achieved by any portfolio of the investment adviser. Hypothetical performance includes, but is not limited to the following:

- Performance derived from model portfolios
- Performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods
- Targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement

The Adopting Release does not define “targeted return” or “projected return” but states that the SEC would generally consider a target or projection to be any type of performance that an advertisement presents as results that could be achieved, are likely to be achieved, or may be achieved in the future by the investment adviser with respect to an investor. However, the SEC recognizes that there are some differences between targeted returns and projected returns. The Adopting Release says that targeted returns are aspirational and may be used as a benchmark or to describe an investment strategy or objective to measure the success of the strategy. Projected returns, on the other hand, use historical data and assumptions to predict a likely return. While there are differences, they are still both considered hypothetical performance under the Marketing Rule.

There are limitations on the use of hypothetical performance. Advertisements that include hypothetical performance may be provided only to those investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations (“investors who have the resources and financial expertise”). A firm must, therefore, adopt policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the

intended audience of the advertisement. The firm must provide sufficient information about the hypothetical performance to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance, as well as the risks and limitations of using hypothetical performance in making investment decisions. If the intended audience is a private fund investor, the firm may instead offer to provide promptly sufficient information about the risks and limitations of using hypothetical performance in making investment decisions.

All communications that include hypothetical performance, even if provided to only one person, are considered advertisements and are subject to the treatment described above.

Reconciliation

The GIPS standards permit firms to present theoretical performance, subject to the overarching requirement to not present performance that is false or misleading. The Marketing Rule takes a much stricter approach and permits hypothetical performance to be provided only to those investors with the resources and financial expertise to appropriately consider such information.

Firms that market to investors who do not have the resources and financial expertise to appropriately consider such information will need to evaluate which types of performance can be provided. For example, if a firm provides a hypothetical blend of an equity and fixed-income strategy that matches an investor’s target allocation, or it provides performance of a model account, it will need to determine if it is appropriate to continue to provide this information to all prospects.

Firms will also need to identify the use of targeted returns, including those used in a composite description, or as a benchmark, or the use of projected returns, and determine if their use is considered hypothetical performance under the Marketing Rule. To comply with the general prohibitions, firms should disclose whether the target returns are stated on a gross or net basis.

GIPS Standards	SEC Marketing Rule
Do not differentiate between who can and cannot receive hypothetical performance.	Differentiates between who can and cannot receive hypothetical performance.
Target returns used to describe a strategy or used as a benchmark are not considered theoretical performance and do not need to be labeled or disclosed as such.	Target returns, including targets used to describe a strategy or used as benchmark returns, may be considered hypothetical performance.

Impact to GIPS-Compliant Firms

Firms will need to develop policies and procedures to determine who can receive theoretical performance. In most cases, a firm will not be able to include theoretical performance on its website. Firms should review the use of target information, including targets used to describe a strategy or used as a benchmark, and determine if it should be treated as hypothetical performance. Firms should disclose whether the target returns are stated on a gross or net basis.

Carve-outs and Extracted Performance

GIPS Standards

A carve-out is a portion of a portfolio that is by itself representative of a distinct investment strategy. It may be used to create a track record for a narrower mandate from a multiple-strategy portfolio managed to a broader mandate.

Carve-outs may be included in a composite and, if they are included, their returns must include cash and any related income. Cash may be accounted for separately or may be allocated synthetically.

A composite that includes carve-outs with synthetically allocated cash is subject to additional requirements.

SEC Marketing Rule

Extracted performance is the performance results of a subset of investments extracted from a single portfolio. Advisers may present extracted performance as long as the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.

Because extracted performance can only be derived from a single portfolio, a composite of extracts, including composite performance that complies with the GIPS standards, is not considered extracted performance. However, a composite of extracts is subject to the additional protections that apply to advertisements containing hypothetical performance.

The Marketing Rule does not require a cash allocation to extracted performance. If an adviser presents extracted performance, it should disclose whether the extracted performance reflects an allocation of cash and the effect of such cash allocation, or the absence of such an allocation, on the results. The Marketing Rule does not explicitly require disclosure regarding the selection criteria and assumptions underlying extracted performance, unless the absence of such disclosures would result in performance information that is misleading or otherwise violates one of the general prohibitions.

Also, while the Marketing Rule does not address cash allocation for a composite of extracts, we can assume that the same guidance would apply.

Reconciliation

Comparing extracted performance to carve-outs is a bit like comparing apples and oranges – they are not the same. All carve-outs under the GIPS standards are not considered extracted performance, and all forms of extracted performance (e.g., security-level returns) are not considered carve-outs under the GIPS standards. A firm must, therefore, determine for itself what is considered extracted performance.

Carve-Outs Included in Composites

The GIPS standards allow for three types of carve-outs:

- A sub-portfolio with its own cash within the sub-portfolio
- A sub-portfolio with a separate dedicated cash account
- A carve-out with cash that is synthetically allocated

Regardless of the type of carve-out, a carve-out included in a composite must be representative of a standalone portfolio managed or intended to be managed according to that composite's strategy.

All of these carve-out types may be included in composites. However, a composite that includes carve-outs and is considered a composite of extracts under the Marketing Rule has limitations on its distribution and is subject to the conditions of hypothetical performance.

The Adopting Release cautions firms about the use of a composite of extracts because, similar to hypothetical performance, this type of composite may not reflect the holdings of any actual investor. The Marketing Rule seems most concerned with performance that is extracted after the fact and does not represent performance of an actual portfolio.

For purposes of the Marketing Rule, firms will need to establish a policy for determining which carve-outs are considered to be a portfolio and which carve-outs are considered to be extracted performance. Some factors a firm may want to consider include:

- whether carve-outs are managed by dedicated teams,
- whether carve-outs are managed with cash separately,
- whether carve-outs are specified within client agreements, and
- whether performance of carve-outs is reported to clients as distinct strategies.

These factors may be strong indications that a carve-out reflects the holdings of an actual client account. A firm might conclude that as long as the carve-outs are managed by dedicated teams, even if they have to allocate cash, it would not be considered extracted performance under the SEC Marketing Rule. We believe that a carve-out that is managed as a sub-portfolio, with or without cash, reflects the performance of an actual investor and a composite that includes such carve-outs would not be considered a composite of extracts that is subject to the additional protections that apply to advertisements containing hypothetical performance. We believe that a composite that includes carve-outs that are not managed as sub-portfolios, whose performance truly is extracted after the fact, would be considered a composite of extracts for Marketing Rule purposes and would be subject to the additional protections that apply to advertisements containing hypothetical performance.

Cash Allocations

A carve-out under the GIPS standards must include cash and any related income. Under the Marketing rule, extracted performance and a composite of extracts are not required to include cash.

Attribution (revised September 2023)

Under the GIPS standards, attribution can be included in a GIPS Report as supplemental information.

The Marketing Rule does not provide guidance specific to attribution. However, the Adopting Release includes one reference to attribution and states, "We continue to believe that extracted performance can provide important information to investors about performance actually achieved within a portfolio. It can also provide investors with information about performance attribution within a portfolio."

Components of some types of attribution analysis might include returns, such as asset class returns, that should be considered extracted performance.

This language has been the subject of much debate. The key question is whether attribution is considered extracted performance, because performance must be presented on a net basis. Under the Marketing Rule, net performance means the performance results of a portfolio, or portions of a portfolio, that are included in extracted performance, if applicable. Firms will need to define in their policies and procedures what portions of a portfolio are considered to be “included in extracted performance.”

Some people have interpreted the language “it can also provide investors with information about performance attribution within a portfolio” as meaning that attribution is always a form of extracted performance. However, the language actually states that extracted performance can (i.e., in some cases) provide investors with information about performance attribution, and it does not state that attribution is considered performance. We interpret this to mean that some forms of extracted performance, which a firm would need to define for itself, may provide investors with information about attribution.

In terms of defining what is extracted performance, the following language in the Adopting Release provides an example of what may be considered extracted performance:

Like the proposed rule, our final rule’s provision for extracted performance addresses the performance results of a subset of investments extracted from a single portfolio. For example, an investment adviser seeking to manage a new portfolio of only fixed-income investments may wish to advertise its performance results from managing fixed-income investments within a multi-strategy portfolio. If a prospective investor already has investments in fixed-income assets, it may want to use the extracted performance to consider the effect of an additional fixed-income investment on the prospective investor’s overall portfolio. The prospective investor may also use the presentation of extracted performance from several investment advisers as a means of comparing investment advisers’ management capabilities in that specific strategy.

One of the challenges results from the use of the term “attribution” to refer to different types of performance-related data. For example, an equity attribution analysis might appear as follows:

2 Factor Attribution									
12/31/2015 - 12/30/2016 Economic Sector									
	European Select Fund			MSCI Europe			Attribution Analysis		
	Port. Average Weight	Port. Total Return	Port. Contrib. To Return	Bench. Average Weight	Bench. Total Return	Bench. Contrib. To Return	Allocation Effect	Selection + Interaction Effect	Total Effect
Total	100.00	6.02	6.02	100.00	2.58	2.58	3.08	0.37	3.44
⊗ Financials	18.59	10.23	-0.05	18.96	-1.59	0.77	-1.24	2.68	1.44
⊗ Health Care	10.40	7.70	0.87	13.67	-9.38	-1.44	0.42	1.63	2.05
⊗ Consumer Staples	11.04	-0.19	0.48	15.51	-0.32	0.06	-0.03	0.87	0.85
⊗ Real Estate	4.77	5.81	0.73	1.49	-2.77	-0.05	-0.25	0.21	-0.04
⊗ Information Technology	1.69	-7.53	-0.01	4.29	4.08	0.20	-0.25	0.09	-0.17
⊗ Utilities	3.48	-5.07	0.06	3.82	-5.59	-0.25	0.08	0.08	0.15
⊗ Telecommunication Services	0.99	-5.60	-0.07	4.74	-13.34	-0.79	0.60	0.05	0.65
⊗ [Cash]	0.48	-0.28	-0.00	--	--	--	-0.02	--	-0.02
⊗ Energy	5.23	44.06	1.45	6.95	32.36	2.22	0.22	-0.62	-0.40
⊗ Consumer Discretionary	7.36	-11.79	-0.94	10.79	-1.49	-0.24	0.35	-1.26	-0.91
⊗ Industrials	22.06	4.32	0.90	12.49	11.23	1.47	1.02	-1.50	-0.48
⊗ Materials	13.92	14.75	2.59	7.31	28.72	2.16	2.17	-1.86	0.32

Sector Returns **Contribution**

Attribution Analysis

Based on our and others' discussions with SEC staff from the Division of Investment Management, we have drawn conclusions about how the different components within such an attribution analysis should be handled.

Sector returns: We believe that the fund sector level returns should be considered extracted performance because they represent the performance of a subset of investments and also represent performance that an investor could "take home." For example, an investor who owned this fund for the annual period presented in this attribution analysis would have earned a 7.70% return on the fund's Health Care holdings. Because sector returns represent performance, these sector returns would be required to be presented on a net basis.

Contribution: Contribution identifies the contribution of portfolio components to the total return of a portfolio. In the preceding example, contribution shows the return each sector contributed to the total portfolio return of 6.02%. For example, the Health Care sector contributed 0.87% of the 6.02%. Whether contribution should be treated as performance is not as clear and may depend on the context of the presentation. Some argue that an investor did take home the 0.87% from the Health Care sector, while others argue that the 0.87% is only meaningful in the context of the 6.02% portfolio return. In light of this uncertainty, the more conservative approach is to consider contribution as a form of extracted performance and present contribution on a net basis.

Attribution analysis: Attribution analysis explains the source of returns relative to the benchmark. In this example, the fund's return of 6.02% exceeded the benchmark return of 2.58%. The attribution analysis explains the source of the outperformance of 3.44% and attributes it to asset allocation differences from the benchmark and choosing different securities than the benchmark. Because this analysis explains performance relative to a benchmark and does not represent performance that an investor would take home, this information would not be required to be presented on a net basis.

To assist firms that wish to calculate net sector returns and net contributions, CFA Institute staff created a spreadsheet that includes examples for how a model fee could be applied to monthly, quarterly, or annual sector returns. The spreadsheet is available on the US SEC Marketing Rule webpage on the GIPS standards website.

Investment-Level Returns (revised September 2023)

In January 2023, the SEC issued an FAQ interpreting the Marketing Rule. The FAQ states that displaying the performance of one investment (e.g., a case study) or a group of investments from a private fund is considered extracted performance under the Marketing Rule. Accordingly, an adviser may not show gross performance of one investment or a group of investments from a private fund without also showing the net performance of that single investment or group of investments, respectively.

Many advisers had taken the position that performance of individual investments was not considered an offer of investment advisory services and, therefore, was not subject to the requirement to provide net performance. This FAQ will have enormous implications for many advisers because it is not common practice to calculate net returns for individual investments. While the FAQ addressed investments within a private fund, it is widely agreed that this guidance would apply to all presentations of investment-level performance and not be limited to private funds.

To assist firms that wish to calculate investment-level net returns on a time-weighted return basis, CFA Institute staff created a spreadsheet that includes an example for how a model fee could be applied to investment-level gross returns. The spreadsheet is available on the US SEC Marketing Rule webpage on the GIPS standards website.

The industry continues to grapple with how to calculate investment-level net internal rates of return (IRRs), and a variety of practices are used. Many industry participants, including CFA Institute staff, are working on calculation templates. Any templates created by CFA Institute staff will be included on the US SEC Marketing Rule webpage on the GIPS standards website and will be announced in the GIPS Standards Newsletter.

GIPS Standards	SEC Marketing Rule
Carve-outs must be representative of a distinct investment strategy.	Extracted performance can be a subset of any extracted investments.
Do not need to present performance of the total portfolio that carve-out performance is taken from.	Must present (or for private fund advertisements, offer to provide) performance of the total portfolio that the extracted performance is taken from.
A composite may include carve-outs.	A composite that includes extracted performance is subject to the conditions of hypothetical performance.

Impact to GIPS-Compliant Firms (revised September 2023)

Firms do not need to make any changes to their carve-out calculation policies and procedures. However, firms will need to determine which types of carve-outs are considered extracts that will cause a composite to be considered a composite of extracts and subject to the conditions of hypothetical performance (i.e., distribution of such composites will be impacted). Firms will also need to determine how they approach the presentation of attribution and investment-level returns and how required net calculations are done and disclosed.

Portability

GIPS Standards

Performance from a past firm may be used to represent the historical performance of the new or acquiring firm, and linked to the performance of the new or acquiring firm, if the new or acquiring firm meets the following requirements on a composite-specific or pooled fund-specific basis:

- Substantially all of the investment decision makers must be employed by the new or acquiring firm (e.g., research department staff, portfolio managers, and other relevant staff).
- The decision-making process must remain substantially intact and independent within the new or acquiring firm.
- The new or acquiring firm must have records to support the performance.
- There must be no break in the track record between the past firm or affiliation and the new or acquiring firm.

If there is a break between the prior firm and the new firm but all of the other tests are met, the performance from the prior firm may be used; however, it may not be linked to the track record at the new or acquiring firm.

When porting a composite, the track record from the prior firm must include all portfolios that were managed in the strategy at the prior firm. This is true even if the prior firm did not claim compliance with the GIPS standards. The firm must disclose when it presents performance from a prior firm and for which periods the performance is from the prior firm.

Changes in a firm's organization must not lead to alteration of historical performance. Performance is the record of the firm, not of the individual. For example, when a key investment decision maker leaves the acquiring firm after the acquisition, the acquiring firm can still use the acquired firm's historical track record as long as the decision-making process remains substantially intact

SEC Marketing Rule

The following requirements must be met for an adviser to be able to use predecessor performance.

- The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;
- The accounts managed at the predecessor investment adviser are sufficiently similar to the accounts managed at the advertising adviser that the performance results would provide relevant information to clients or investors;
- All accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any prescribed time periods; and
- The advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.

The Marketing Rule does not differentiate between linked and non-linked performance.

Reconciliation

A firm that meets the GIPS standards requirements for porting a track record will meet the requirements of the Marketing Rule. However, there is an important difference in the ability to continue to use the ported track record when there is a change in the investment decision makers after the new or acquiring firm has ported the track record. Under the GIPS standards, the determination of whether a ported track record can continue to be used when there is a subsequent change with the investment decision makers depends on whether the decision-making process remains substantially intact. There must have been an adequate transfer of knowledge so that the remaining investment decision makers have enough knowledge to continue managing portfolios in the strategy.

Under the Marketing Rule, a strict reading of the language seems to imply that the person or persons responsible for that ported track record must continue to manage accounts at the new or acquiring firm. If the person or persons no longer manage the accounts, no matter the reason, the historical performance from the prior firm can no longer be used. Please note that there is no widespread agreement on how this language should be interpreted.

Additionally, the GIPS standards require that the track record from the prior firm must include all portfolios that were managed in the strategy at the prior firm. This is true whether or not the prior firm claimed compliance with the GIPS standards. The Marketing Rule takes a different approach and applies the same concepts as previously discussed with respect to related performance. Performance from the prior firm must include all accounts that were managed in a substantially similar manner; however, performance from the prior firm may exclude any such account as long as the exclusion of any such account would not result in materially higher performance and does not alter the presentation of any prescribed time periods. Because the GIPS standards are more strict than the Marketing Rule, if an investment adviser includes all of the portfolios in the composite from the past firm, it will meet both the GIPS standards and the Marketing Rule requirements.

GIPS Standards	SEC Marketing Rule
Once the portability tests are met, the prior performance becomes the performance of the new or acquiring firm.	If the portability tests are no longer met because the person(s) primarily responsible for achieving the prior performance results no longer manages accounts, the ported performance should not be used.
For a composite, performance from the prior firm must include all portfolios managed to the strategy at the prior firm.	For a composite, performance from the prior firm may exclude accounts from the prior firm managed to the strategy as long as the results are not materially higher and the exclusion does not change the prescribed time periods.

Impact to GIPS-Compliant Firms

There are very different views on how the SEC Marketing Rule language should be interpreted. Some firms are taking a conservative approach and are reviewing all ported track records and eliminating the ported track record if there has been a subsequent material change to the investment management team. Other firms are continuing to use a ported track record and justify doing so because it has been

common practice for many years to apply the portability tests only at the time of the portability event. Until the SEC provides additional guidance with respect to predecessor performance, each firm with a ported track record will need to determine how it interprets the SEC Marketing Rule predecessor performance guidance.

Additional Disclosures to Comply with the SEC Marketing Rule

Firms that comply with the GIPS standards will need to ensure that any advertisements containing performance include the applicable disclosures required by the Marketing Rule. As described earlier, a firm will need to determine whether a GIPS Report will be treated as a standalone advertisement that must include all disclosures required by both the GIPS standards and the SEC Marketing Rule, or if the disclosures will be included in other materials that accompany the GIPS Report. Regardless of where these disclosures are located, the following disclosures are not required by the GIPS standards but may be required by the Marketing Rule, depending on the facts and circumstances:

1. Whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings
2. The effect of material market or economic conditions on the results portrayed (may not be required if benchmark returns are included)
3. The possibility of loss
4. Material facts relevant to any comparison made to the results of an index or other benchmark (Example: When the volatility of the index is materially different from that of the model or actual performance results with which the index is compared)
5. A description of the type of performance return presented, including what elements are included in the return presented so that the audience can understand, for example, how it reflects cash flows and other relevant factors
6. If current performance is not presented or available, and events have occurred since the date of the performance presented that would have a significant negative effect on the adviser's performance, should include appropriate disclosure about the performance presented in the advertisement
7. If presenting related performance on a portfolio-by-portfolio basis, the size of the portfolios and the basis on which the adviser selected the portfolios (e.g., the adviser presents performance of all individual predecessor funds as supplemental information)
8. The criteria used in defining the related portfolios and crafting the composite
9. When presenting extracted performance, disclose that it represents a subset of a portfolio's investments. An adviser is not required to provide detailed information regarding the selection criteria, and the assumption underlying extracted performance, unless the absence of such a disclosure, based on the facts and circumstances, would result in performance information that is misleading or otherwise violates one of the general prohibitions. An adviser should take into account the audience for the extracted performance in crafting disclosures. (Note: While this disclosure applies to extracted performance from a single portfolio, it is clear from the context that a composite of extracts should also include this disclosure.)
10. When presenting extracted performance, whether the extracted performance reflects an allocation of the cash held by the entire portfolio, and the effect of such cash allocation, or the absence of such an allocation, on the results (Note: While this disclosure applies to extracted

performance from a single portfolio, it is clear from the context that a composite of extracts should also include this disclosure.)

11. When hypothetical performance is included, the adviser must disclose information about the hypothetical performance that is tailored to the audience, such that the intended audience has sufficient information to understand the criteria, assumptions, risks, and limitations.

Exhibit A – Sample GIPS Report

SAMPLE 1 COMPOSITE WITH TIME-WEIGHTED RETURNS

Spinning Top Investments
 Large Cap Growth Composite
 1 February 2011 to 31 December 2020

Year	Composite		Benchmark Return (%)	3-Year Std Deviation		Number of Portfolios	Internal Dispersion (%)	Composite Assets (\$ M)	Firm Assets ^(b) (\$ M)
	Gross Return TWR (%)	Composite Net Return TWR (%)		Composite Gross (%)	Benchmark (%)				
2011 ^(a)	2.18	1.25	1.17			31	n/a	165	n/a
2012	18.66	17.49	15.48			34	2.0	235	n/a
2013	41.16	39.80	33.36			38	5.7	344	n/a
2014	14.50	13.37	13.03	11.30	9.59	45	2.8	445	1,032
2015	6.52	5.47	5.67	12.51	10.68	48	3.1	520	1,056
2016	8.22	7.15	7.09	12.95	11.15	49	2.8	505	1,185
2017	33.78	32.48	30.18	12.29	10.53	44	2.9	475	1,269
2018	-0.84	-1.83	-0.65	13.26	11.91	47	3.1	493	1,091
2019	33.08	31.78	29.76	12.81	11.71	51	3.5	549	1,252
2020	7.51	6.44	6.30	13.74	12.37	54	2.5	575	1,414

^(a) Returns are for the period 1 February 2011 to 31 December 2011.

^(b) Spinning Top Investments acquired the composite through an acquisition of ABC Capital in May 2014. Firm assets prior to 2014 are not presented because the composite was not part of the firm.

Disclosures

- Spinning Top Investments claims compliance with the Global Investment Performance Standards (GIPS®) and has prepared and presented this report in compliance with the GIPS standards. Spinning Top Investments has been independently verified for the periods 1 January 2011 to 31 December 2020. The verification report is available upon request. A firm that claims compliance with the GIPS standards must establish policies and procedures for complying with all the applicable requirements of the GIPS standards. Verification provides assurance on whether the firm's policies and procedures related to composite and pooled fund maintenance, as well as the calculation, presentation, and distribution of performance, have been designed in compliance with the GIPS standards

and have been implemented on a firm-wide basis. Verification does not provide assurance on the accuracy of any specific performance report.

2. Spinning Top Investments is an equity investment manager that invests solely in US-based securities. Spinning Top Investments is defined as an independent investment management firm that is not affiliated with any parent organization. Spinning Top Investments acquired ABC Capital in May 2014.
3. The Large Cap Growth Composite includes all institutional portfolios that invest in large-cap US stocks that are considered to have growth in earnings prospects that are superior to that of the average company within the XYZ Large Cap Growth Index. Key material risks include the risks that stock prices will decline and that the composite will underperform its benchmark. The account minimum for the composite is \$5 million. Prior to July 2016, the account minimum was \$2 million. Prior to March 2020, the name of the composite was the Growth Composite.
4. Performance prior to May 2014 occurred while the investment management team was affiliated with another firm. The investment management team has managed the composite since its inception, and the investment process has not changed. The historical performance has been linked to performance earned at Spinning Top Investments.
5. The benchmark is the XYZ Large Cap Growth Index, a market-capitalization-weighted equity index of all US stocks with a market cap greater than \$10 billion and a growth tilt.
6. Returns presented are time-weighted returns. Valuations are computed and performance is reported in US dollars.
7. Gross-of-fees returns are presented before management and custodial fees but after all trading expenses. Composite and benchmark returns are presented gross of non-reclaimable withholding taxes. Net-of-fees returns are calculated by deducting a model management fee of 0.083%, 1/12th of the highest management fee of 1.00%, from the monthly gross composite return. The management fee schedule for separate accounts is as follows: 1.00% on the first \$25 million; 0.60% thereafter. The management fee schedule and total expense ratio for the Large Cap Collective Fund, which is included in the composite, are 0.65% on all assets and 0.93%, respectively.
8. Policies for valuing investments, calculating performance, and preparing GIPS reports are available upon request.
9. A list of composite descriptions and a list of broad distribution pooled funds are available upon request.
10. The composite was created in November 2011, and the inception date is 1 February 2011.
11. As of 1 January 2014, internal dispersion is calculated using the equal-weighted standard deviation of annual gross returns of those portfolios that were included in the composite for the entire year. Prior to 2014, internal dispersion was calculated using asset-weighted standard deviation.

12. The three-year annualized standard deviation measures the variability of the composite gross returns and the benchmark returns over the preceding 36-month period.
13. Effective November 1, 2011, portfolios are removed from the composite if they have a significant cash flow. A significant cash flow is defined as a contribution or withdrawal greater than 25% of the beginning market value of a portfolio. The portfolio is removed from the composite for the month in which the significant cash flow occurred.
14. GIPS® is a registered trademark of CFA Institute. CFA Institute does not endorse or promote this organization, nor does it warrant the accuracy or quality of the content contained herein.