



CFA Institute

SEC Marketing Rule Developments and Best Practices

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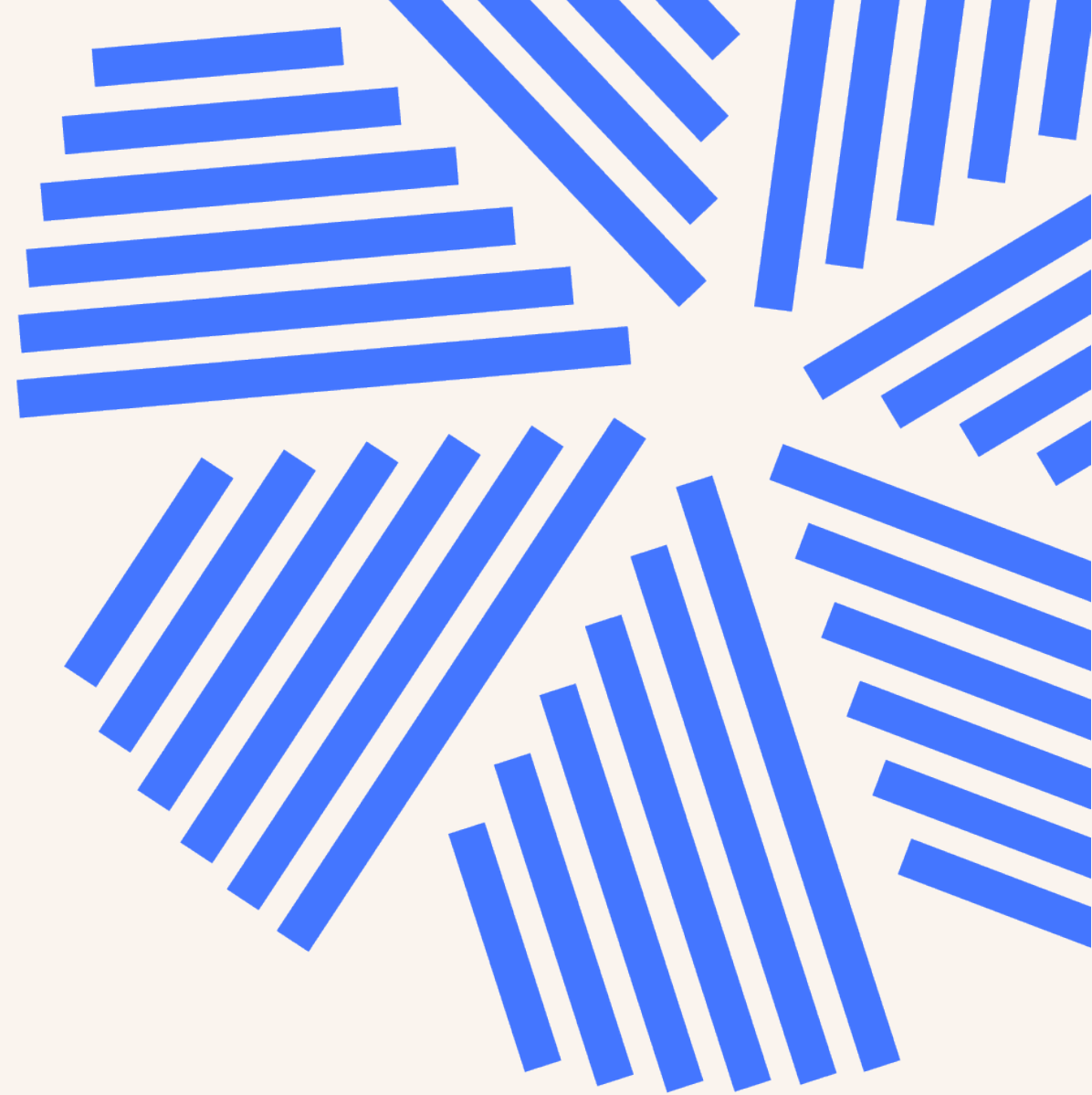
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Agenda

- New Marketing Rule FAQs
- Subscription Facilities and NAV Loans
- Model Fees and Footnote 590
- Hypothetical Performance
- Performance Portability



New Marketing Rule FAQs

Extracted performance may be shown on a gross only basis *if*:

- The extract is clearly identified as gross of fees;
- The performance of the portfolio or composite from which the extract was derived is also presented:
 - Consistent with the requirements of the Marketing Rule;
 - On a gross and net basis, to demonstrate the effect of fees;
 - With at least equal prominence to and in a manner designed to facilitate comparison with the extract; and
 - Over a period of time that includes the entire period over which the extract is calculated.

Portfolio or investment characteristics may be shown on a gross only basis *if*:

- The characteristic is clearly identified as gross of fees;
- The performance of the portfolio or composite from which the characteristic was derived is also presented:
 - Consistent with the requirements of the Marketing Rule;
 - On a gross and net basis, to demonstrate the effect of fees;
 - With at least equal prominence to and in a manner designed to facilitate comparison with the characteristic; and
 - Over a period of time that includes the entire period over which the characteristic is calculated.

Subscription Facilities and NAV Loans

Date	Transaction Description	With Sub Fac			Without Sub Fac	
		Net	Gross	Bank	Net	Gross
01/01/22	Sub Line Drawdown			(2,250)	(2,250)	(2,250)
01/02/22	Mgmt fees			-		200
02/10/22	Sub Line Drawdown			(5,000)	(5,000)	(5,000)
12/15/22	Capital Call	(7,250)	(7,250)	7,250		
12/15/22	Mgmt fees		200			
01/02/23	Mgmt fees	-	200			200
01/03/23	Distribution	400	400		400	400
02/28/23	Distribution	5,500	5,500		5,500	5,500
03/20/23	Capital Call	(2,750)	(2,750)		(2,750)	(2,750)
04/15/23	GP Tax Advance	-	150			150
07/15/23	Expenses	-	100			100
12/31/23	Ending Value	5,200	5,200		5,200	5,200
12/31/23	Accrued Carry		300			300
	IRR	23.01%	47.78%		9.41%	17.88%

Subscription Facilities and NAV Loans

Performance Type	Permissible Presentations					
Gross Without Credit Facility			X		X	X
Net Without Credit Facility		X	X	X	X	X
Gross to LP (With Credit Facility)		X		X		X
Net to LP (With Credit Facility)	X*	X*		X	X	X

* Must be accompanied by disclosure describing the impact of the subscription credit facility on the performance shown

Common Approaches

Model Fees and Footnote 590

Net performance may be calculated by deducting:

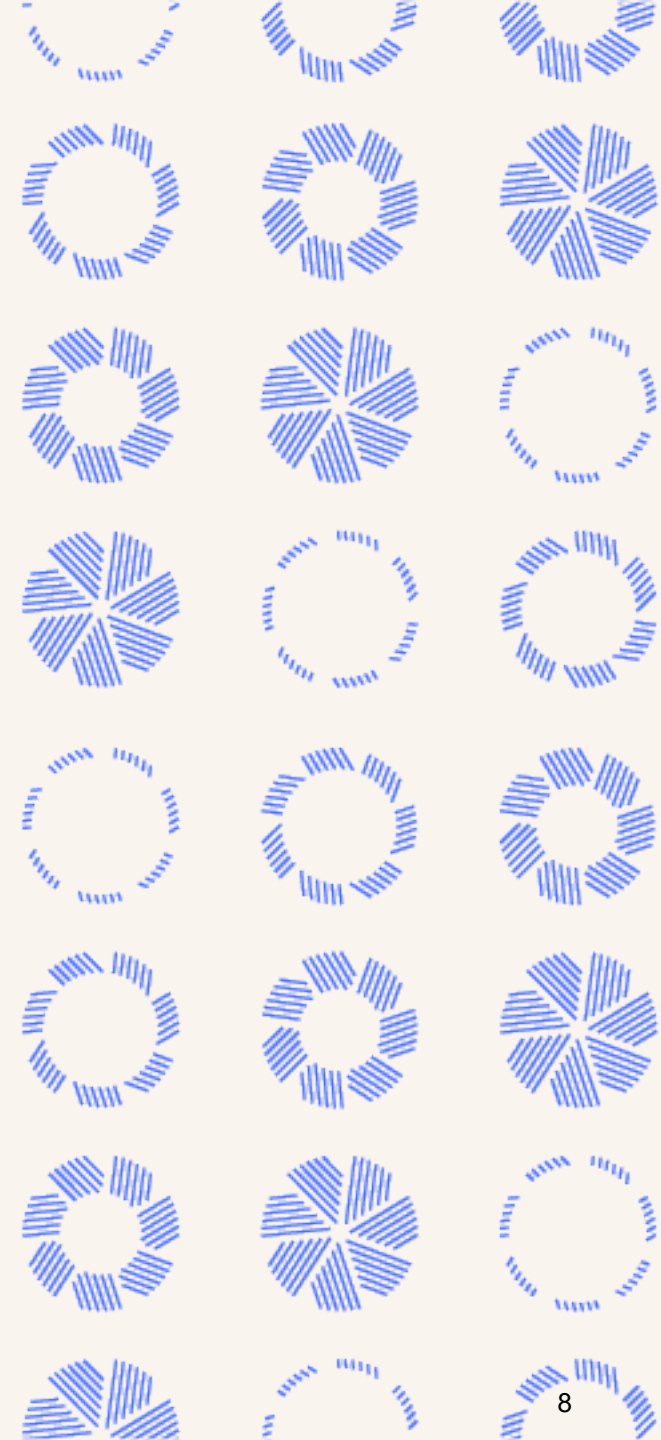
- The **actual fees** a client or investor has paid or would have paid; or
- A **model fee** *if*:
 - Doing so would result in performance figures that are no higher than if the actual fee had been deducted; or
 - Equal to the highest fee charged to the intended audience to whom the advertisement is disseminated



Model Fees and Footnote 590

Adopting Release FN 590

“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.”



Hypothetical Performance

What is hypothetical performance?

Targets and Projections

- Does not include projections of general market performance

Model Performance

- Performance of models or "paper portfolios" that reflect investment decisions made in real time, but not actually implemented
- Actual performance that has been altered to reflect performance no individual investment program or investor realized (*e.g.*, the selection of certain actual transactions drawn from multiple, distinct private funds)

Backtested Performance

- Application of a strategy to data from prior time periods when the strategy was not actually used during those time periods

Hypothetical Performance

Hypothetical performance may be presented only if the adviser:

- Has adopted **policies and procedures** to ensure that the performance is relevant to the likely financial situation and investment objectives of the **intended audience**;
- Provides **criteria used and assumptions made** in calculating the performance; and
- Provides sufficient information to enable intended audience to understand **risks and limitations** of using hypothetical performance to make investment decisions

Performance Portability

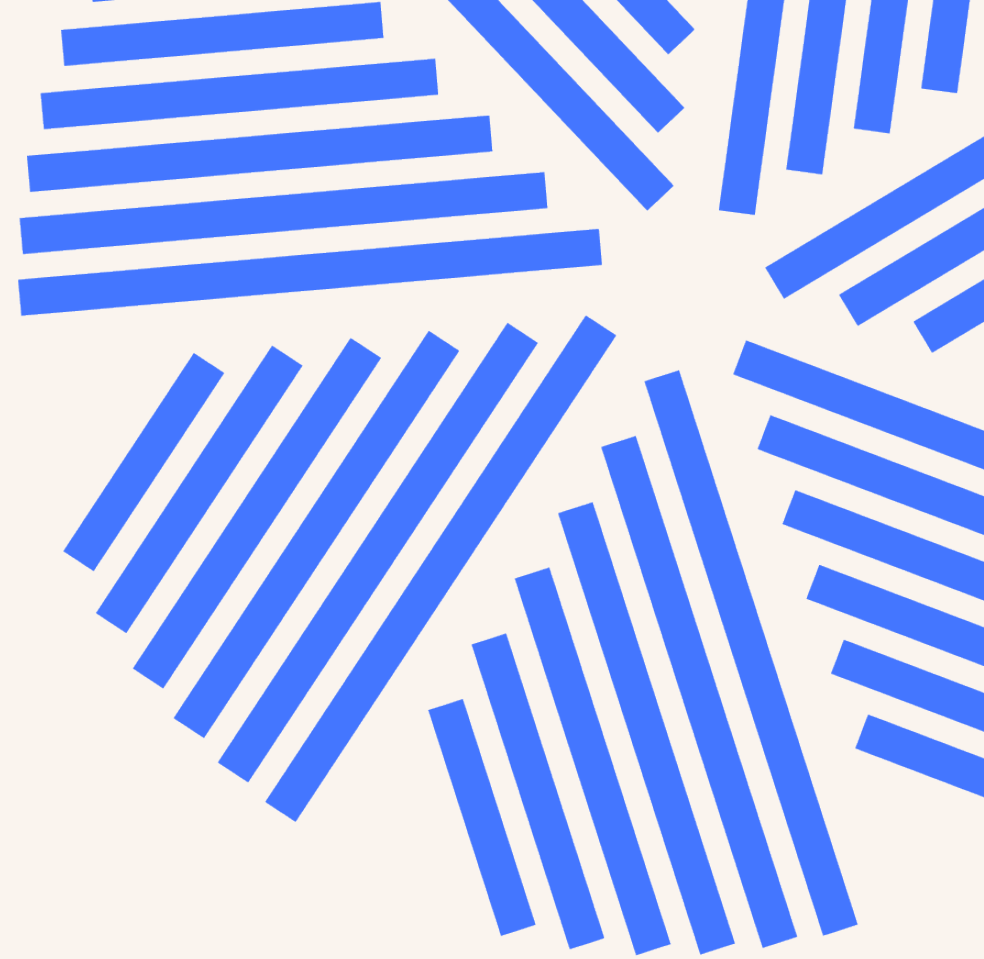
Predecessor performance may be shown provided that:

- Person(s) **primarily responsible** for achieving prior performance results continue to manage accounts at the advertising adviser
- Accounts managed at predecessor adviser are **sufficiently similar** to accounts managed at advertising adviser
- All accounts **managed in a substantially similar manner** are advertised *unless* exclusion of any account would not result in materially higher performance or alter the presentation of any prescribed time periods
- Advertisement clearly and prominently includes **all relevant disclosures** and indicates performance results were from accounts managed at another entity

Performance Portability

“Advisers should consider the substantive responsibilities of those who are responsible for generating the performance at issue and, where more than one individual is primarily responsible for making investment decisions, whether a **substantial identity** of the group responsible for achieving the prior performance have moved over to the advertising adviser...”

Questions



Thank you!

