



CFA Institute

SEC Marketing Rule: Latest Developments and Practical Solutions

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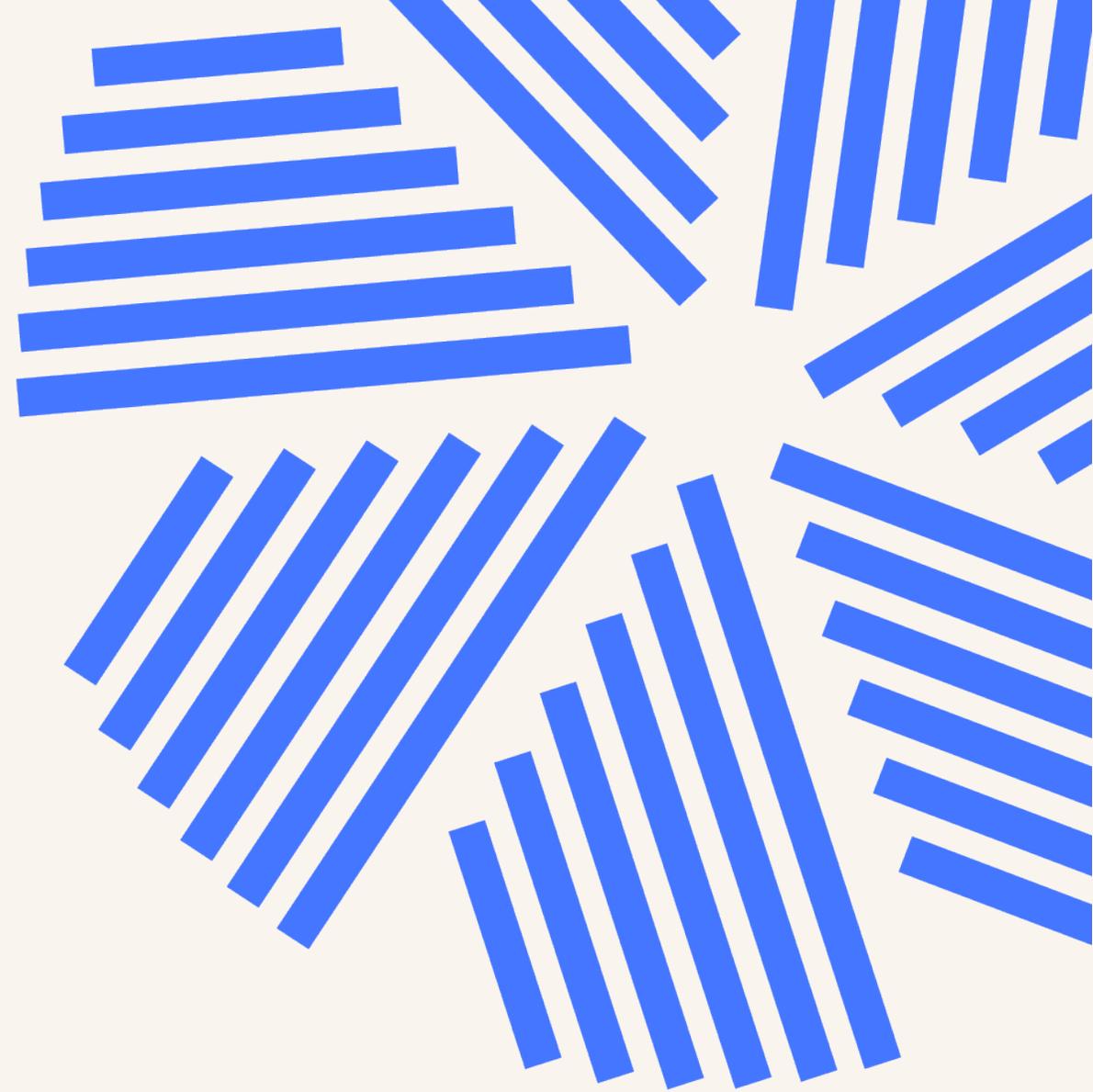
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Agenda

- **January 2026 FAQ on Model Fees**
- **Hypothetical Performance**
 - Identifying Hypothetical Performance
 - Using Hypothetical Performance
- **Q&A**



Where We Stand Today



Net Performance: Actual vs. Model Fees

Net performance may be calculated by deducting:

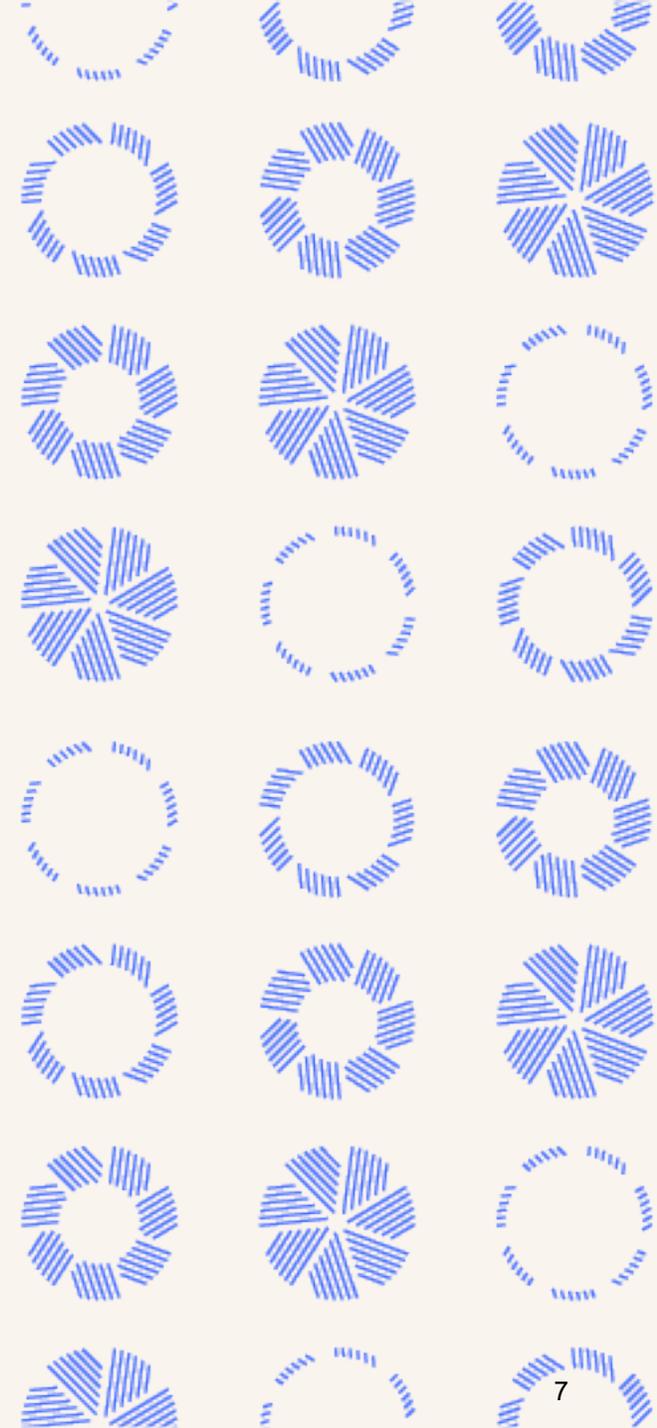
- The **actual fees** a client or investor has paid or would have paid; or
- A **model fee** *if*:
 - Doing so would result in performance figures that are no higher than if the actual fee had been deducted; or
 - Equal to the highest fee charged to the intended audience to whom the advertisement is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



Net Performance: 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.”

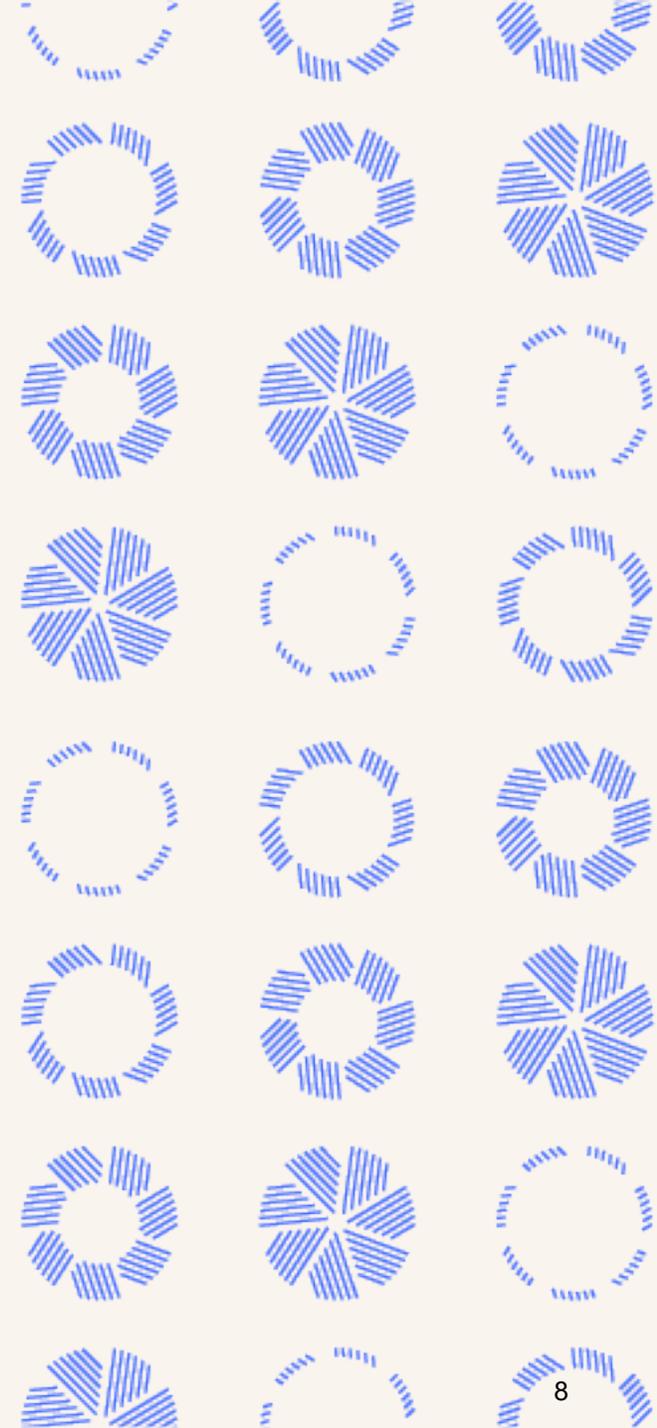


Net Performance: January 2026

FAQ

“The Commission noted in the adopting release that the general prohibitions are intended to ‘provide appropriate flexibility and regulatory certainty for advisers considering how to market their investment advisory services’ and ‘[i]n applying the general prohibitions, an adviser should consider the facts and circumstances of each advertisement.’

In the staff’s view, whether the use of actual fees violates the general prohibitions depends on all of the facts and circumstances of a specific advertisement, including, but not limited to, relevant disclosures. The staff’s view is that advisers may use various means to illustrate the effect of differences between actual fees and anticipated fees on performance.”



Net Performance Presentations in Different Eras

What is permissible for an adviser marketing a new private fund (Fund VI)?

- Old Advertising Rule
- Footnote 590
- New FAQ

	Year	Gross IRR	Net IRR	Management Fee	Performance Allocation
Fund VI	2026	N/A	N/A	2%	20%
Fund V	2022	20%	18%	2%	20%
Fund IV	2019	22%	18%	2%	20%
Fund III	2014	24%	21%	1.5%	15%
Fund II	2010	18%	15%	1%	10%
Fund I	2008	14%	12%	1%	10%



Is it Performance?



Maturity; Duration	Yield	Excess returns
Sharpe Ratio; Beta	Alpha	Sector returns
EBITDA; Earnings Growth	Contribution	Individual positions
(True) Attribution	Max Drawdown	TVPI; MOIC

If it's not **performance**, it's not **hypothetical performance**.

But always consider the specific facts and circumstances.



Is it Hypothetical Performance?



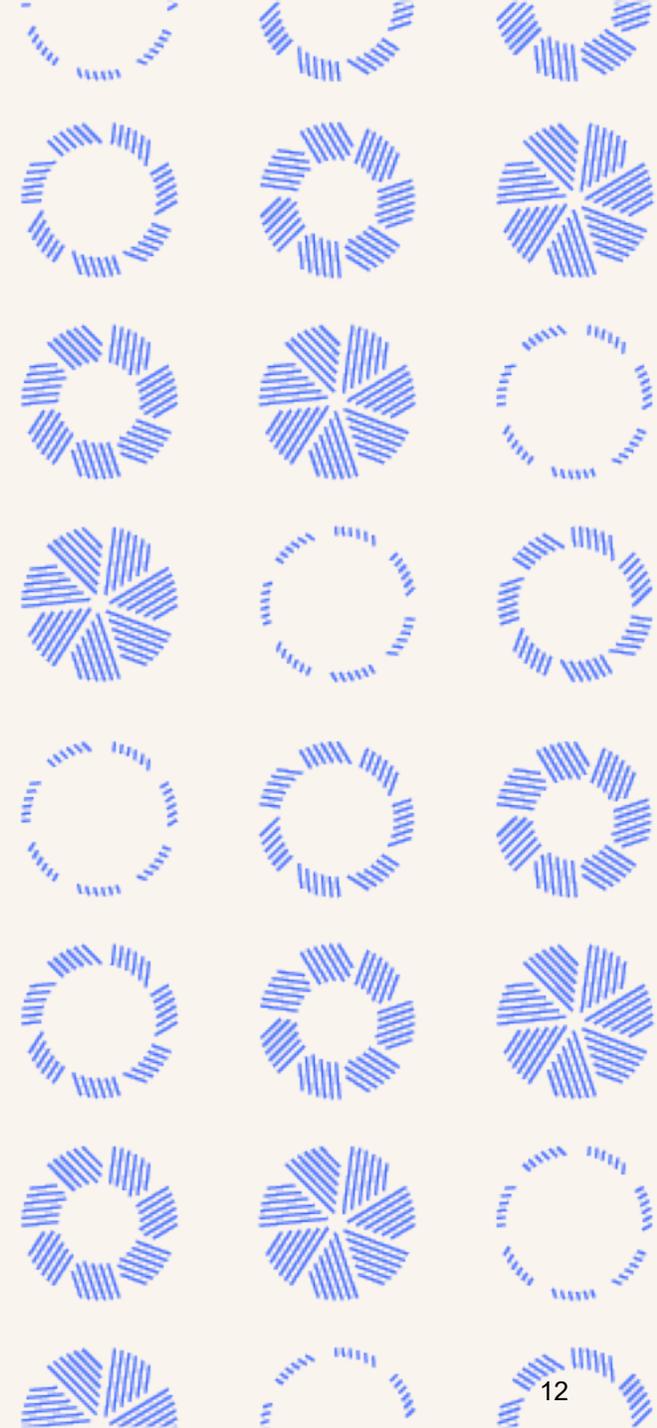
Index performance	Performance extracted from a composite	Performance derived from model portfolios
Net performance calculated using model fees	“Track records” derived from actual transactions across multiple accounts	Hypothetical backtests
Expressions of mathematical concepts	Simulations based on an investor’s experience	Targets or projections

“Hypothetical performance means performance results that were not actually achieved by any portfolio of the investment adviser.”

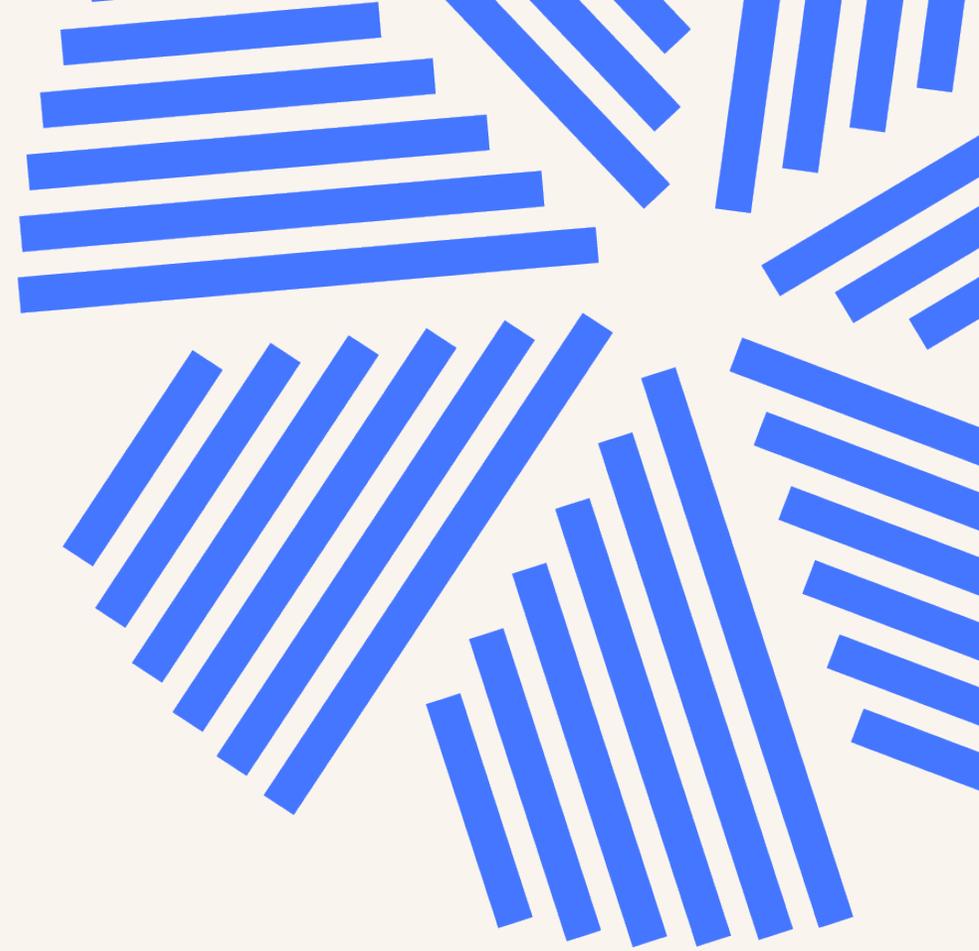


Using Hypothetical Performance

- **Is the material an “Advertisement”?**
 - Reporting (to existing clients)
 - Market projections in white papers
 - Materials provided in response to an unsolicited request or to a private fund investor in a one-on-one presentation
- **Who is the target audience?**
 - Written procedures
- **Is it accompanied by appropriate disclosure?**
- **Do you have the necessary records?**
 - Documenting your determinations
 - Documenting recipients



Questions?



Thank you!

