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Kirkland AIM

SEC Marketing Rule Guidance Relaxes Requirements Related to Net Performance Presentations

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On March 19, 2025, the staff (the “Staff”) of the U.S. Securities and Exchange Commission (the “SEC”) released updated Advisers Act Marketing Rule [guidance](#), relaxing requirements for the circumstances in which an SEC-registered private fund adviser needs to present net performance.

This new guidance (1) generally permits a private fund adviser to return to the historical practice of presenting gross-only performance for certain subsets of its investments in advertisements (e.g., PPMs and pitch decks) if the advertisement contains Marketing Rule-compliant performance presentations for the total portfolio (or composite, as discussed further below), and (2) provides express additional guidance on certain other uses of gross performance and other metrics related to investment “characteristics.” For example, an advertisement can present gross-only performance metrics in portfolio company case studies or discussions of a fund’s sector performance and then cross-reference to the page number or section that contains the Marketing Rule-compliant net fund performance presentations.

When implementing the new guidance, private fund advisers need to continue to consider the Marketing Rule’s requirements with respect to “hypothetical performance” (e.g., net calculations are required for targets, projections and composites constituting hypothetical performance) and should review their compliance policies and procedures for any necessary updates (e.g., revise any requirement to present net performance for individual investments or extracted performance if intending to rely on the guidance).

Guidance Relating to Performance Extracts

The guidance permits a private fund adviser to show the gross performance of one or more investments in a private fund or other portfolio (an “extract”)¹ without presenting the net performance of the extract, if:

1. the extract is clearly identified as gross performance (e.g., states the extract does not reflect the deduction of all fees and expenses that a client or investor has paid or would have paid);
2. the extract is accompanied by, or clearly cross-references to, a Marketing Rule-compliant performance presentation for the total portfolio to which the extract relates (a “Compliant Presentation”) (i.e., shows net and gross performance with equal prominence and calculated using the same methodology over the same time period);
3. the Compliant Presentation is presented with “at least equal prominence” to, and in a manner designed to facilitate comparison with, the extract (i.e., includes the Compliant Presentation in the document and clearly cross-references to it); and
4. the time period covered by the Compliant Presentation includes the entire period over which the extract is calculated and the time period covered by the extract is clearly disclosed.²

Guidance Relating to Portfolio Characteristics

In addition, the guidance permits a private fund adviser to present “gross” investment characteristics (e.g., yield, coupon rate, contribution to return, volatility, sector or geographic returns, attribution analyses, the Sharpe ratio, the Sortino ratio, and other similar metrics) without including a corresponding net number if the presentation of the gross characteristic follows the conditions described in 1-4, above, with respect to extracts.³ The relief with respect to portfolio characteristics does not apply to the following metrics, which the Staff views as performance concepts regardless of how they are labeled: total return, time-weighted return, return on investment (RoI), internal rate of return (IRR), multiple on invested capital (MOIC), or Total Value to Paid in Capital (TVPI).

We expect the guidance regarding characteristics will have a limited impact on most private fund sponsors’ disclosure practices. The Staff did not take a position regarding whether any particular investment characteristic or attribute described above should be considered “performance” for purposes of the Marketing Rule, and many sponsors do not consider certain of these characteristics to constitute adviser performance under the Marketing Rule.

We are available to discuss the facts and circumstances surrounding the use of particular characteristics or attributes to help you determine whether they likely constitute performance for purposes of the Marketing Rule.

If you have any questions, please contact the Kirkland IFG and regulatory attorneys with whom you regularly work.

1. The Staff noted the guidance regarding extracts also applies to an extract from a composite of all related portfolios. ↩

2. For non-private funds that must comply with the one-, five-, and ten-year time period requirements for performance presentations set forth in Rule 206(4)-1(d)(2), the Staff noted an extract would be within the guidance if the extract was calculated over a single, clearly disclosed period (i.e., when including an extract, provide the relevant dates for which the performance is being presented (“date invested” and “date realized”)). ↩

3. The Staff noted the guidance regarding characteristics also applies to characteristics calculated based on the performance of (i) a composite aggregation of related portfolios; (ii) a representative account; (iii) a subset of a portfolio (i.e., extracted performance); and (iv) a subset extracted from a composite aggregation of related portfolios, provided the characteristics are presented in a manner consistent with the guidance. ↩

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Suggested Reading

- 13 March 2025 Kirkland AIM SEC No-Action Letter Opens the Door Wider on Rule 506(c) Offerings
- 30 January 2025 Kirkland AIM SEC Delays Implementation Date for Revised Form PF Allowing April 30th Filings to Use Current Form
- 07 January 2025 Kirkland AIM Private Fund Manager U.S. SEC / CFTC Compliance: 2025 Key Dates

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