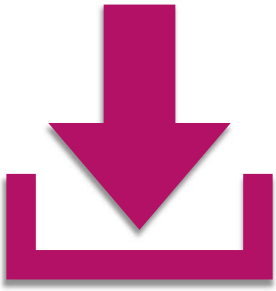
Marketing Rule Developments

AUGUST 14, 2025

Download Our Slides

https://www.ria-compliance-consultants.com/marketing_rule_develop



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Already Effective As Of 1/1/24:

AR; CA; CO; DC; FL; HI; KY; MD; MI; MS; NV; ND; OK; OR; SC; TN; VT; & WI.

Effective On 1/1/25:

Minnesota; Nebraska; New Jersey; Rhode Island and U.S. Virgin Islands

Live Course Submitted to NASAA But Not Yet Approved

RCC Has Submitted This Live Presentation to NASAA for Approval as an IAR CE Course

Once Approved, RCC Will Contact Attendees About Next Steps for Obtaining IAR CE Credit

NASAA Disclosure

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Course Requirements

- **Login** - You must be logged in during the presentation under your email address.
- **View Entire Presentation** – You are required to watch the entire live presentation the course.
- **Attendance Codes** - As you watch the presentation, you will receive two attendance codes, each containing three alphanumeric characters. Save these codes. You will need to enter the full six-character attendance code prior to accessing the final quiz.
- **Login** – You will need to login into *https://www.CE4Advisers.com* and select/purchase this course.
- **IAR Acknowledgement** – Sign the IAR CE Acknowledgement & Attestation.
- **Final Quiz -** You must complete each lesson and receive a score of **70%** on the final quiz to receive IAR CE credit (assuming the course has been approved by NASAA).

Content Questions & Technical Help

If you have questions about the content of this course or need technical help, please contact us via the email address below:

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Limitations

- The information provided is educational and should be not be considered individualized advice.
- This course is not an exhaustive analysis of the entire Marketing Rule. The Marketing Rule is complex and there are other factors and considerations investment advisers need to understand that are not covered within this one-hour course.
- The material focuses on the SEC's Marketing Rule (206(4)-1). Although many states have adopted or follow Rule 206(4)-1, there is not complete uniformity among all state regulators. This presentation does **not** discuss the differences for state firms and is limited to requirements imposed by the SEC.
- Therefore, it is not a substitute from getting assistance and specific advice from a securities attorney or compliance professional.

Course Overview and Learning Objectives

- The purpose of this course is to explain the core requirements of Rule 206(4)-1 Investment Adviser Marketing so that an Investment Adviser Representative (IAR) has a good understanding of the compliance requirements when marketing investment advisory services.
- Learning Objectives
  - Know the definition of "Advertisement".
  - Understand Rule 206(4)-1's "General Prohibitions".
  - Learn about prohibitions and limitations related to:
    - Testimonials & endorsements,
    - Third-party ratings, and
    - Performance materials.
- The importance of written oversight and compliance.
- Review and learn about the SEC Marketing Rule enforcement actions released on September 9, 2024.
- Properly answer Item 5.L. of Form ADV Part 1.

Resources, Recommended Materials and References

- 275.206(4)-1**Investment Adviser Marketing** under the Investment Advisers Act of 1940: https://www.law.cornell.edu/cfr/text/17/275.206(4)-1
- SEC's Interpretive Final Rule Release for 206(4)-1: https://www.sec.gov/newsroom/press-releases/2020-334
- SEC's September 9, 2024 enforcement actions related to Rule 206(4)-1: https://www.sec.gov/newsroom/press-releases/2020-334
- SEC's Marketing Compliance Frequently Asked Questions (last updated March 19, 2025): https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/marketing-compliance-frequently-asked-questions

Definition of Advertisement

Advertisement Means:

(i) 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**, but does not include:

- (A) Extemporaneous, live, oral communications;
- (B) 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
- (C) A communication that includes hypothetical performance that is provided:
  - (1) 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
  - (2) To a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication;
- (ii) Any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly, but does not include any 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.

Examples of Non-Advertisements

- The following are examples of marketing materials that are not technically considered "Advertisements" per the Rule's definition.
  - Brand Content
  - General Educational Material
  - Market Commentary

  *Always dependent on facts and circumstances. Contingent on **no** information about the adviser's services.

Communications to One Person

Hypothetical Performance that is not provided in response to an **unsolicited** investor request or to a private fund investor in a one-on-one communication.

Any endorsement or testimonial for which an investment adviser firm provides compensation.

General Prohibitions Under Rule 206(4)-1

An advertisement may not:

1. Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;
2. Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission;
3. Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;

General Prohibitions Under Rule 206(4)-1 (continued)

An advertisement may not:

4. Discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;
5. Include a reference to specific investment advice provided by the investment adviser where such investment advice is not presented in a manner that is fair and balanced;
6. Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or
7. Otherwise be materially misleading.

Definition of Testimonial

Testimonial means any statement by a current client or investor in a private fund advised by the investment adviser:

i. About the client or investor's experience with the investment adviser or its supervised persons;

ii. That directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or

iii. That refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser.

Definition of Endorsement

Endorsement means any statement by a person other than a current client or investor in a private fund advised by the investment adviser that:

i. Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons;

ii. Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or

iii. Refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser.

Testimonials & Endorsements – Questions Compliance Should Ask

✓ Will you use related persons (partners, officers, directors, or other employees) for testimonials?

✓ Will you use employee family-members for testimonials?

✓ How will you handle the testimonial of someone who becomes a former client?

✓ Will you solicit testimonials?

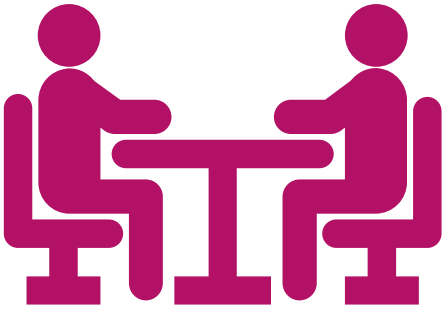
✓ Will you solicit people to post comments or reviews on social media?

✓ Do you utilize the services of a third-party marketing firm to solicit or seek reviews?

✓ Will you link comments, reviews, and other testimonials from a social media or other website?

✓ How will you handle negative reviews and comments?

✓ Will you allow employees to use the "Recommendation" or "Endorsement" features of LinkedIn?



Testimonials & Endorsements – Various Platforms

- Social media accounts like LinkedIn, X, Facebook, YouTube,
- Social media accounts controlled by third parties such as Yelp!, Angi, Google Reviews,
- Websites,
- Commercials,
- Interviews,
- Newsletters.

Testimonials & Endorsements – Compliance Requirements



- Compliance Reviews and Controls
  - Written Compliance Policies and Procedures
  - Properly identifying testimonials and endorsements to ensure minimum required disclosures are included.
  - Reviewing and approving testimonials and endorsements.

Required Disclosures for Testimonials & Endorsements

- **Clearly and prominently** disclose:

  (A) That the testimonial was given by a current client or investor, and the endorsement was given by a person other than a current client or investor;

  (B) That cash or non-cash compensation was provided for the testimonial or endorsement, if applicable;

  (C) A brief statement of any material conflicts of interest;

- **Material terms of any compensation arrangement**;

- Description of any **material conflicts of interest** resulting from the adviser's relationship with the person giving the testimonial or endorsement.



Third-Party Ratings - Definition

Third-party rating means a rating or ranking of an investment adviser provided by a person who is not a related person (as defined in the Form ADV Glossary of Terms), and such person provides such ratings or rankings in the ordinary course of its business.

Third-Party Rating Compliance



An advertisement may not include any third-party rating unless:

(1) The adviser has a reasonable basis for believing the questionnaire or survey is structured to allow both favorable and unfavorable responses;

(2) Clearly and prominently discloses:

(i) The date and time period of the rating;

(ii) The identity of the third party that created and tabulated the rating;

(iii) If applicable, that compensation was provided by the adviser in connection with the rating.

Third-Party Rating Compliance

- Compliance controls for reviewing and approving third-party ratings
- Verifying and reviewing any payments made.
- Verifying and reviewing any questionnaires or other information provided to the sponsor of the third-party ranking.



Takeaways and Lessons Learned from SEC Enforcement Actions

- One Sept. 9, 2024, the SEC announced settled charges against nine investment advisers for violating the Marketing Rule by disseminating advertisements that included untrue or unsubstantiated statements of material fact or testimonials, endorsements, or third-party ratings that lacked required disclosures.
- Without admitting or denying the SEC's findings, all of the firms consented to the entry of orders finding that they violated the Investment Advisers Act of 1940 and ordering them to be censured, cease and desist from violating the charged provisions, comply with certain undertakings, and pay civil penalties.

SEC Enforcement Actions – Third Party Ratings

Facts: Advertised misleading third-party ratings, including misstating rankings (e.g., "Top 12 Financial Advisor" instead of "Top 1200") and failing to disclose dates or periods for awards and ratings. State Top 100 Women's Advisor rather than the correct "Top 100 Women Financial Advisors". This misstatement suggested the rating related to investment advice provided to women instead of an award for female investment advisers.

Result: Censured, cease-and-desist order, and **$150,000 civil penalty**.

Key Lesson: Marketing materials must accurately represent third-party ratings and include required disclosures (e.g., dates, time periods). Misleading or incomplete information violates the Marketing Rule.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6678.pdf

SEC Enforcement Actions – Third Party Ratings (continued)

Facts: Included third-party ratings in advertisements without disclosing when the ratings were given or the periods they covered. Ranking appeared to be current when in fact it did not disclose that the firm's principal received the award more than 16 years ago.

Result: Censured, cease-and-desist order, and **$60,000 civil penalty**.

Key Lesson: Even if ratings are accurate, omitting required disclosures (dates, context) is a violation. Transparency is essential under the Marketing Rule.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6683.pdf

SEC Enforcement Actions – Third Party Ratings (continued)

Facts: Advertised an award for a firm principal without being able to substantiate the claim; also used third-party ratings without required disclosures. Creating the appearance of a ranking that appeared to be current but had been attained in 2018 and not attained again since. Claims of ratings for 14 consecutive years without substantiation.

Result: Censured, cease-and-desist order, and **$80,000 civil penalty**.

Key Lesson: Firms must have a reasonable basis to substantiate all marketing claims, including awards and recognitions. Unsupported claims breach the Marketing Rule.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6684.pdf

SEC Enforcement Actions – Third Party Ratings (continued)

Facts: Advertised third-party ratings, some older than twenty years, without disclosing dates or time periods.

Result: Censured, cease-and-desist order, and **$295,000 civil penalty**.

Key Lesson: Using outdated ratings without proper disclosure is misleading. Compliance with disclosure requirements is critical to avoid investor deception.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6685.pdf

SEC Enforcement Actions - Conflict-Free Claims

Facts: Advertised that it was "free from conflicts of interest" and could deliver "unbiased, conflict-free, best-in-class service" without context. However, its Form ADV Part 2A disclosed multiple conflicts of interest.**1**

Result: Censured, cease-and-desist order, and **$70,000 civil penalty**.**2**

Key Lesson: Do not claim to be conflict-free unless you can fully substantiate it. Any claim must align with disclosures in Form ADV and actual business practices.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6679.pdf

SEC Enforcement Actions - Conflict-Free Claims (continued)

Facts: Claimed on its website that an adviser "provides clients with conflict-free advice" without context. The firm's Form ADV disclosed conflicts of interest applicable to that adviser.

Result: Censured, cease-and-desist order, and **$85,000 civil penalty**.

Key Lesson: Avoid unqualified statements like "conflict-free advice." If conflicts exist (and they almost always do), such claims are misleading and violate the Marketing Rule.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6680.pdf

SEC Enforcement Actions - Conflict-Free Claims (continued)

Facts: Advertised that it "eliminated conflicts of interest" and was "a true fiduciary that puts the client first by aligning incentives," despite acknowledging conflicts in its Form ADV.

Result: Censured, cease-and-desist order, and **$325,000 civil penalty** (largest in this sweep).

Key Lesson: Marketing language must not contradict disclosures. Claims of eliminating conflicts are inherently problematic because advisers are compensated for advice, which itself is a conflict.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6682.pdf

SEC Enforcement Actions - Conflict-Free Claims (continued)

Facts: Advertised "conflict-free advisory services" and falsely claimed membership in a non-existent organization.

Result: Censured, cease-and-desist order, and **$85,000 civil penalty**.

Key Lesson: Avoid absolute statements like "conflict-free" and verify all organizational affiliations before publishing. Misrepresentation of memberships compounds violations.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6686.pdf

SEC Enforcement Actions - Testimonials & Endorsements

Facts: Disseminated advertisements claiming to include two client testimonials, but neither came from actual clients. Advertised endorsements without disclosing that the endorser was a **paid, non-client**. These endorsements appeared in **videos, social media posts, and on physical items** like bags and flags.

Result: Censured, cease-and-desist order, and **$90,000 civil penalty**.

Key Lesson: Testimonials must come from actual clients, and endorsements require **clear disclosure** of whether the endorser is a client and whether compensation was provided. Marketing Rule violations often occur when firms fail to provide these disclosures or misrepresent the source of testimonials.

Citation: https://www.sec.gov/files/litigation/admin/2024/ia-6681.pdf

SEC Enforcement Actions - Unsubstantiated Facts

Facts: Posted an advertisement falsely claiming membership in an organization that did not exist.

Result: Censured, cease-and-desist order, and **$85,000 civil penalty**.

Key Lesson: All factual statements in marketing materials must be **true and verifiable**. Misrepresenting affiliations or making claims that cannot be substantiated violates the Marketing Rule and erodes investor trust.

Citation:
https://www.sec.gov/files/litigation/admin/2024/ia-6686.pdf

Performance Advertising



The SEC does not provide a single, formal definition of "performance" in the Marketing Rule. Instead, it regulates how performance information may be presented in advertisements and provides examples and conditions under which performance data can be used.

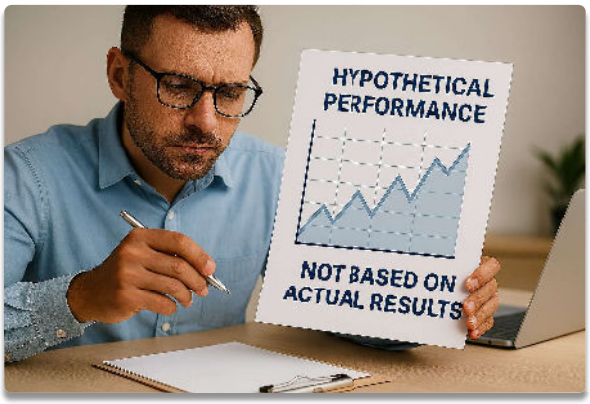
Performance advertising generally refers to any marketing communication that includes performance results of an investment adviser's services, portfolios, or strategies. This includes:

- Actual performance of client accounts or funds
- Hypothetical performance (e.g., model, back-tested, projected)

Performance Definitions (continued)

- Extracted performance: Means the performance results of a subset of investments extracted from a portfolio.
- Gross Performance: Results before deduction of all fees and expenses.
- Net Performance: Results after deduction of all fees and expenses.
- Portfolio: A group of investments managed by the adviser.

Performance Definitions (continued)



- Hypothetical Performance includes:

  (A) Model portfolios (computer-generated, adjusted strategies, purchased models);

  (B) Back-tested performance;

  (C) Targeted or projected returns.

- Does NOT include:

  (A) Interactive analysis tools with proper disclosures;

  (B) Predecessor performance in compliance with SEC rules.

Performance Definitions (continued)

- Predecessor Performance: Performance from a portfolio not advised by the adviser during the entire period.
- Related Performance: Results from one or more related portfolios.
- Related Portfolio: Portfolio with substantially similar investment policies, objectives, and strategies.



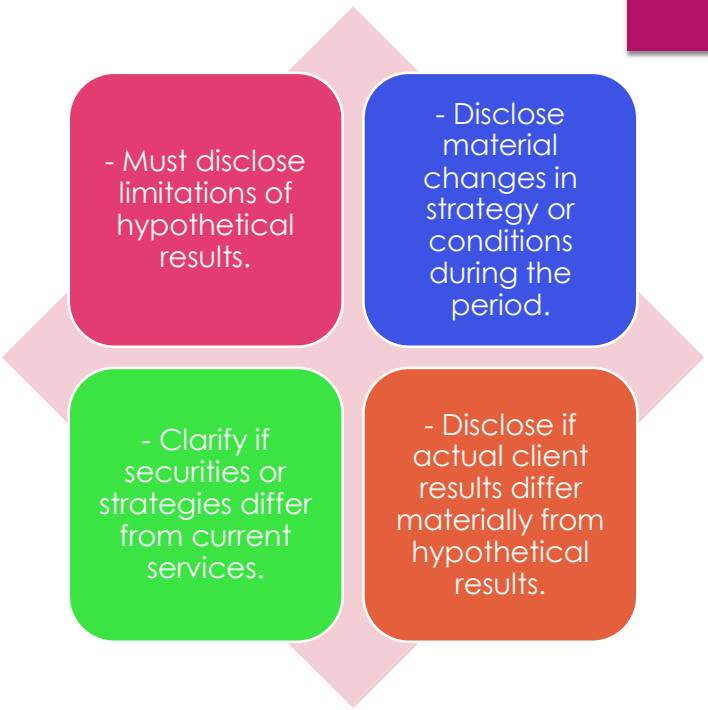
SEC Prohibitions on Performance Advertising

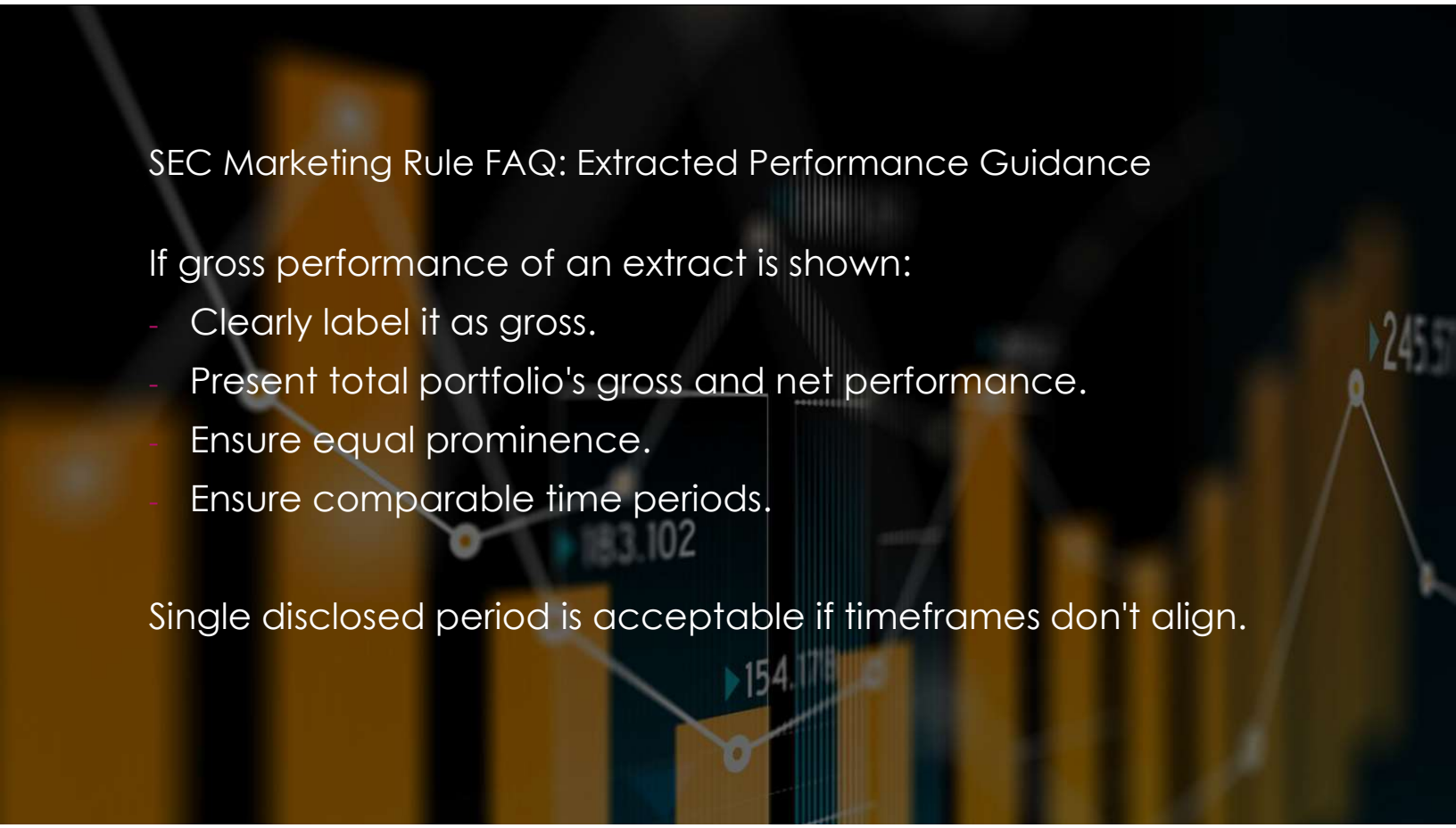
- Gross performance must be accompanied by net performance with equal prominence.
- Must include 1-, 5-, and 10-year performance periods unless portfolio is newer. This does not apply to private fund performance.
- Cannot imply SEC approval of performance presentation.
- Related performance must include all related portfolios unless exclusions meet specific conditions.
- Extracted performance must include or offer total portfolio performance.
- Hypothetical performance requires policies, disclosures, and audience records.
- Predecessor performance must meet continuity and disclosure requirements.

Common Issues with Performance Advertising

- Omitting impact of material market or economic conditions.
- Not disclosing reinvestment of dividends and earnings.
- Highlighting potential profits without risk disclosure.
- Comparing results to an index without full context.
- Omitting material conditions or strategies used to achieve results.

Additional Considerations for Hypothetical Performance



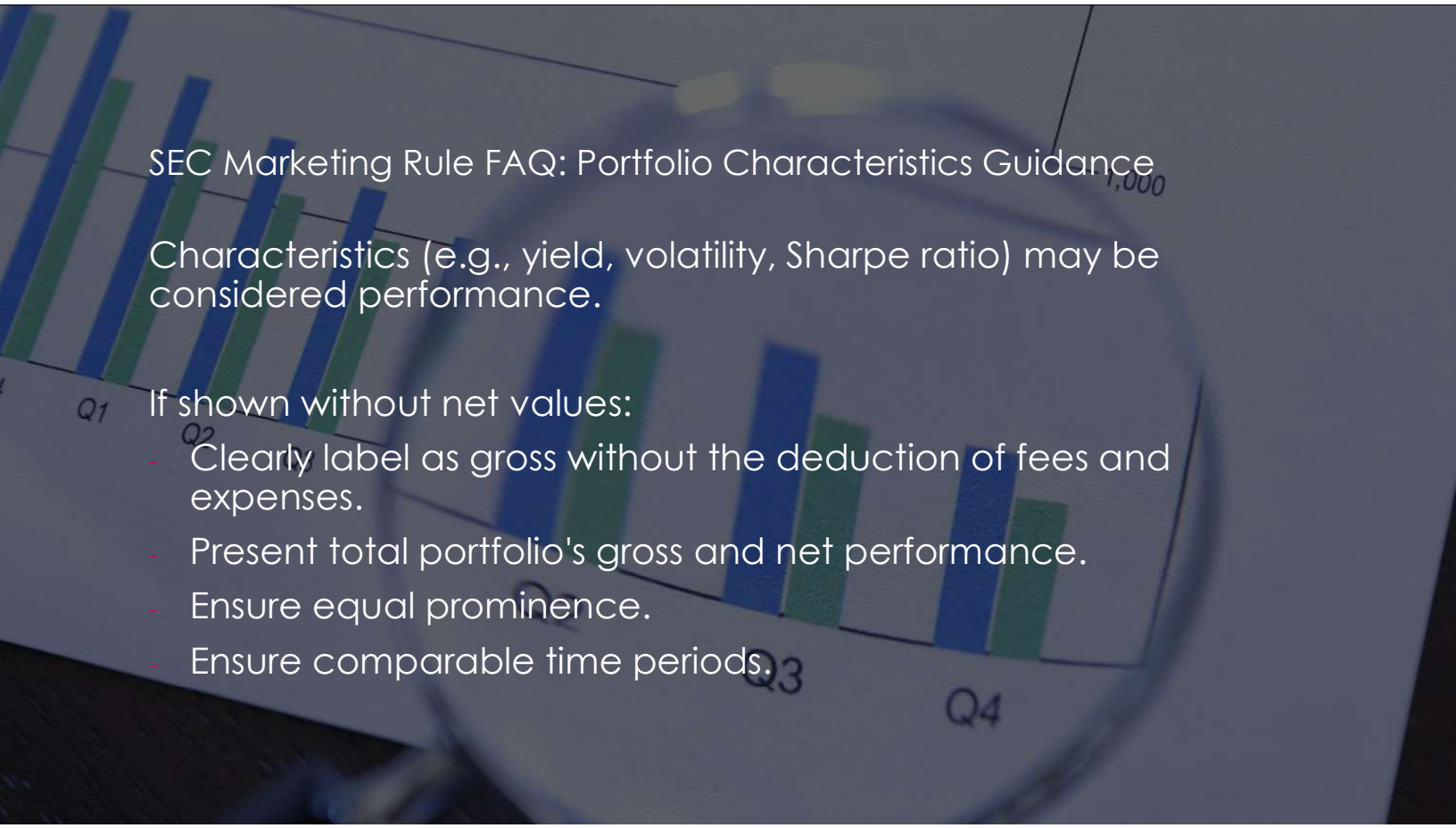


SEC Marketing Rule FAQ: Extracted Performance Guidance

If gross performance of an extract is shown:

- Clearly label it as gross.
- Present total portfolio's gross and net performance.
- Ensure equal prominence.
- Ensure comparable time periods.

Single disclosed period is acceptable if timeframes don't align.

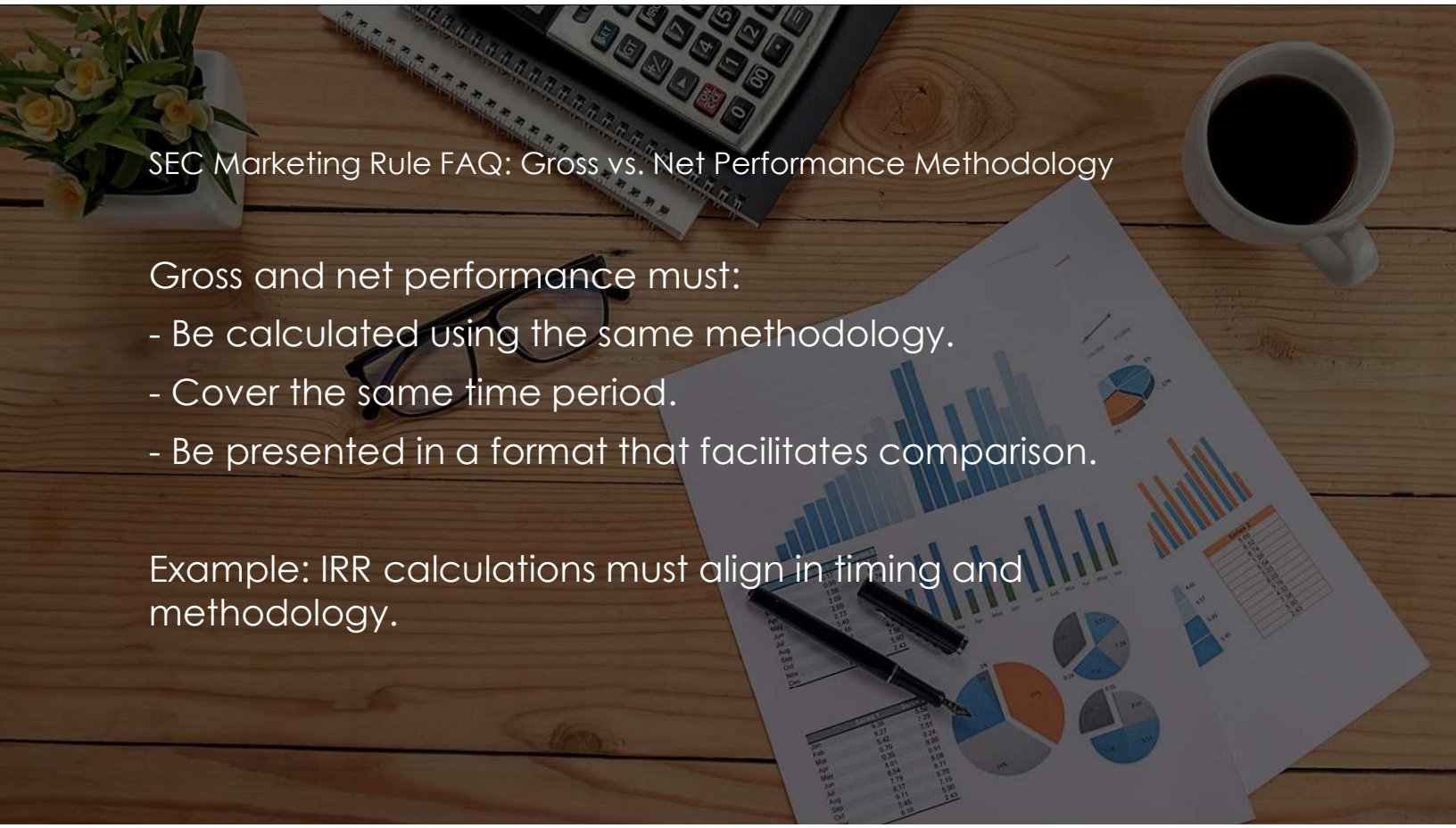


SEC Marketing Rule FAQ: Portfolio Characteristics Guidance

Characteristics (e.g., yield, volatility, Sharpe ratio) may be considered performance.

If shown without net values:

- Clearly label as gross without the deduction of fees and expenses.
- Present total portfolio's gross and net performance.
- Ensure equal prominence.
- Ensure comparable time periods.



SEC Marketing Rule FAQ: Gross vs. Net Performance Methodology

Gross and net performance must:

- Be calculated using the same methodology.
- Cover the same time period.
- Be presented in a format that facilitates comparison.

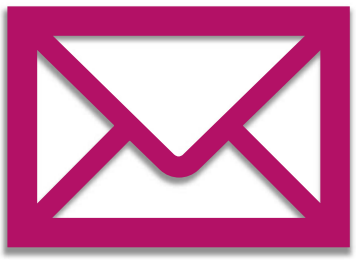
Example: IRR calculations must align in timing and methodology.

Form ADV Part 1, Item 5.L. – Marketing Activities

- Must be accurate and kept current, with amendments made promptly.
- Must disclose if your firm's advertisements include:
  - Performance results.
  - A reference to specific investment advice provided by Adviser
  - Testimonials
  - Endorsements
  - Hypothetical performance.
  - Predecessor performance.

Questions

Please submit any question online or email with any questions about the content of this course.



ContEd@ria-compliance-consultants.com

Thank You

