

May 23, 2024

SEC MARKETING RULE

**How the New SEC Guidelines are Being
Practically Implemented & Applied**



Moderator



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Panelist



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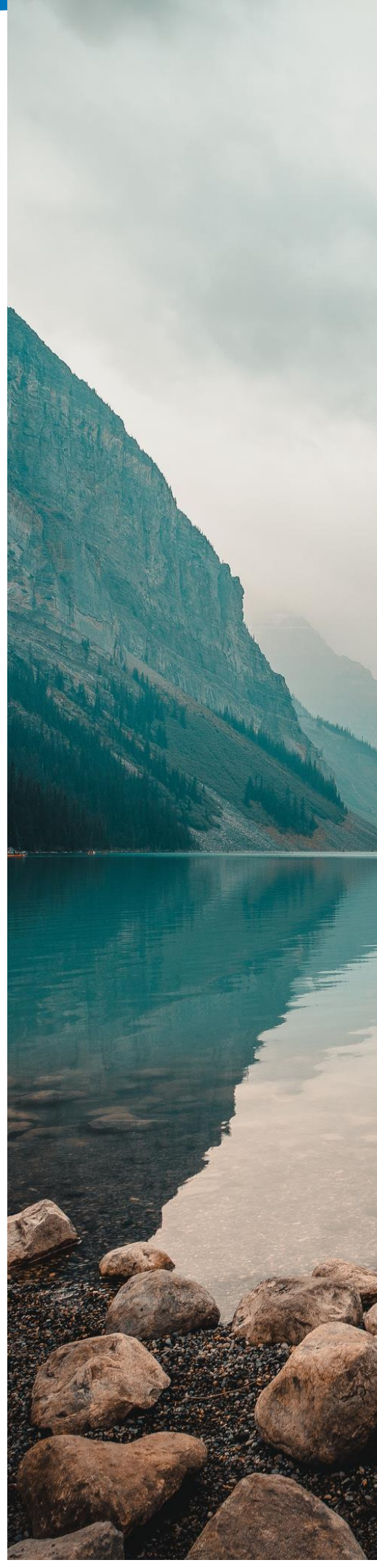
Panelist



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Agenda Overview

- Returns
- Yield
- Substantiation Requirements
- Attribution Analysis
- Calculating IRR
- Hypothetical Performance
- Current Events
- General Observations



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Returns: Net vs Gross

- **Why must firms show net?**
- **What is considered to be performance and therefore required to be shown as net?**
- **What can be shown on a gross only basis?**
- **Considerations in adopting an appropriate methodology to calculate net**



Characterizing Yield

- **When is yield considered a performance statistics vs a characteristic?**
- **How are firms using yield in advertisements?**
- **In which scenarios must it be net?**



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Substantiation Requirements

- **What do firms need to be aware of when it comes to substantiation?**
- **What is the SEC looking for in puffery vs non puffery?**
- **What should firms consider for support in substantiating statements made in advertisements?**



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Attribution Analysis

- Is this performance?
- How do you see firms addressing the marketing rule when presenting attribution?
- If performance, does the net requirement differ based on how the firm is presenting attribution?



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Calculating IRR

- Is there one set calculation methodology required by the SEC?
- Anything unique to consider in gross vs net requirements for IRRs that differ from TWRs?
- Does the prescribed time period requirement differ for IRRs vs TWRs?
- What other information are firms advertising in addition to the IRR?



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Hypothetical Performance

- **What does the SEC consider to be hypothetical?**
- **Do you see firms still presenting this?**
- **What type of internal controls do firms need to establish if they wish to present hypothetical performance?**
- **Where and how are firms presenting hypothetical performance that is not in violation of the marketing rule?**



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Current Events

- Any recent events you have seen coming from the SEC?
 - Where did these firms go wrong/how could have the citations been avoided?
- Any upcoming events or trends you see in future examinations?
- Out of all the items within the marketing rule, have you seen the SEC focusing on specific requirements within the marketing rule during examinations?



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Any other challenges you see firms struggling with in light of the SEC marketing rule?

- Other than what we have discussed during the panel already, what other challenges and questions have you seen firms bring up?
- Any closing remarks or other comments on the marketing rule to share?



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Questions?

Moderator



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