

# 2021 COMPLIANCE WORKSHOPS

IAA Virtual Compliance Workshops

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25th ANNIVERSARY

## Presentation of Performance Under the New Marketing Rule

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# Presentation of Performance

- Gross and net returns
- Reporting periods
- Related, extracted and hypothetical performance
- Portability of predecessor performance
- Recordkeeping

# Management Fees

- Gross and Net of Fees Performance Required
  - Equal prominence: same time periods, same methodology
- No prescribed disclosures
- Model fees permitted
  - Highest fee charged to “intended audience”
  - Consistency with 2020 GIPS Standards

## Reporting Periods

- 1, 5 and 10 year intervals
- Same prominence
- Consistent with 33 Act Rule 482
- FAQ allows 30 days after FYE to show prior year
- Private funds are exempt

## Related Performance

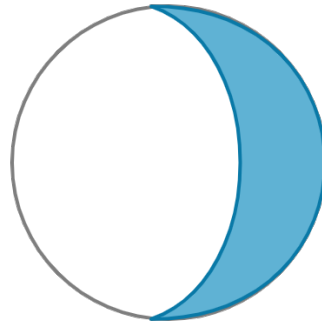
- Interaction with GIPS Standards
- Substantiating excluded portfolios
  - Results not materially higher than if had been included
  - Exclusion does not change reporting periods
  - Treatment of representative accounts

## Extracted Performance

- Performance of a subset of investments drawn from *one* portfolio
  - Carve-outs
  - Attribution
- *Not* treated as hypothetical performance
- Interaction with GIPS

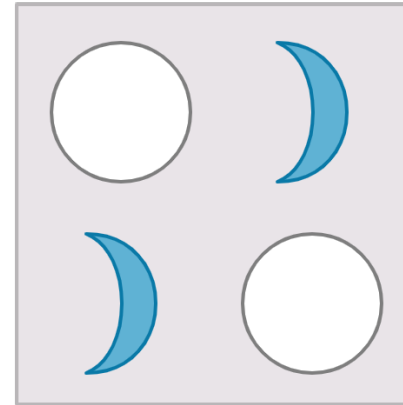


EXTRACTED  
PERFORMANCE



Extract

HYPOTHETICAL  
PERFORMANCE



Composite

# Hypothetical Performance

- Any performance “not actually achieved”
  - Seed capital okay, but must be bona fide amount
  - Model performance
  - Performance targets or projections
- An “advertisement” if sent to one person
- But excludes “interactive analysis tools”



# Hypothetical Performance Conditions

- Policies and procedures to ensure relevant to financial situation, objectives of the audience
- Disclose criteria and assumptions
- Disclose information to allow audience to understand the risks and limitations
- Recordkeeping requirements

# Portability of Predecessor Numbers

- Generally consistent with prior no-action relief
- Topics for consideration:
  - “Substantial identity” of teams post-acquisition
  - Status of no-action relief for moves among affiliates

# New Recordkeeping Requirements

- Written or recorded materials of disclosures for oral advertisements
- All advertisements
- Support and communications concerning portfolio performance too

# New Recordkeeping Requirements

- For hypothetical/model performance
  - Copies of all information provided OR OFFERED
  - Records of “intended audience” (relevant to the financial situation and investment objectives)
- Also answer YES on ADV Part 1, Item 5L as appropriate

# Similar Recordkeeping Requirements

- Written communications concerning performance or rate of return
- Documents showing the basis for performance calculations
- Documentation of communications re predecessor performance

# Thank You

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