



February 9, 2024

## CCO Update: New Marketing Rule FAQ

On February 6, 2024, the U.S. Securities and Exchange Commission (the “SEC”) released a new [frequently asked question](#) (“FAQ”) regarding the impact of a fund's utilization of a “subscription facility” (i.e., capital call facility) in calculating gross and net internal rates of return (“IRR”).

Rule 206(4)-1 (the “Marketing Rule”) requires that any presentation of gross performance be accompanied by a presentation of net performance that has been calculated over the same time period and using the same type of return and methodology as the gross performance.

Accordingly, in the FAQ, the SEC states that an adviser would violate the Marketing Rule if it were to advertise its (i) gross IRR calculated from the time when it makes an investment (therefore excluding the impact of the “subscription facility”) alongside (ii) net IRR calculated from the time investor capital is called and the “subscription facility” is retired (i.e., a later date, after the adviser makes an investment).

The SEC has been scrutinizing marketing materials for compliance with the Marketing Rule, the intricacies of which can be complex and open to interpretation. If you have any questions, please do not hesitate to contact us!

---

Please contact Orical to discuss any of your regulatory, operational, or compliance concerns, at [info@orical.org](mailto:info@orical.org) or (212) 257-5790.