

Exempt Offerings

Thursday, October 20, 2022

2:45 p.m. - 3:45 p.m.

This session focuses on industry and regulatory developments related to Reg D and Reg A+ offerings. During the session, panelists discuss common concerns and recent regulatory findings. Speakers provide practical information and effective practices for firms offering these products to retail investors and discuss Regulatory Notices 20-21 and 21-26.

Moderator: Kimberly Flanders
Associate Director
FINRA Advertising Regulation

Panelists: Minh Le
Director Private Placements
FINRA Corporate Financing

Krista Harvey, CFA, CIPM
Director, Global Industry Standards | Ethics, Standards, Professional Conduct
CFA Institute

Cameron Hellewell
General Counsel
Orchard Securities, LLC

Crissy Escamilla
Principal Analyst
FINRA Advertising Regulation

Exempt Offerings Panelist Bios:

Moderator:



Kimberly Flanders is Associate Director in FINRA's Advertising Regulation Department. Her chief responsibility is managing staff members dedicated to the review of matters involving complex products and novel regulatory concerns. Ms. Flanders joined FINRA (f/k/a NASD) in March 1995 as an examiner in the Enforcement Department. She joined the Advertising Regulation Department in March 1996. In January 2001, Ms. Flanders joined Bisys Services as a senior advertising regulation consultant. Ms. Flanders returned to the Advertising Regulation Department in September 2001. Prior to joining FINRA, she was an investigator with the Resolution Trust Corporation. Ms. Flanders received a B.A.

from the University of Georgia.

Panelists:

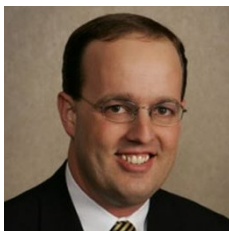


Minh Q. Le is Director of FINRA's Corporate Financing Department. He has more than 20 years of experience in the regulation of public and private offerings. Currently, Mr. Le manages the department's Private Placement Review program which conducts regulatory oversight of broker-dealer participation in retail private offerings. In addition to overseeing the review and investigation program, Mr. Le's duties include developing policy and providing guidance on corporate financing and other capital-raising related issues. Mr. Le also routinely provides subject matter expertise to FINRA's Examination and Enforcement staffs. Building on this

experience, Mr. Le serves as a member on FINRA's Regulatory Specialist committees for Public Offerings, Private Placements, and Non-traded Direct Participation Programs (DPP) and Real Estate Investment Trusts (REIT), and was a member of FINRA's Risk Assessment Committee. For the past 19 years, he has been a member of FINRA's Sales Rep and DPP/REIT Qualifications Committees. Prior to his involvement in developing FINRA's private placement rules and the filing program, Mr. Le was a manager in the department's Public Offerings Review program, which is responsible for regulating underwriting terms and arrangements in public offerings. Mr. Le graduated from the University of Maryland, attended the Wharton Institute of Executive Education, and is a Certified Regulatory and Compliance Professional (CRCP)[®].



Krista Harvey, CFA, CIPM is a Director on the Global Industry Standards team at CFA Institute. Previously, she held senior roles on Investment Performance teams at TIAA, Jennison Associates, and Goldman Sachs. Prior to joining CFA Institute, Krista was a longtime volunteer. She chaired the United States Investment Performance Committee (USIPC) and was a member of the GIPS Standards Interpretations Subcommittee. Krista also co-founded and co-chaired the CFA Society of NY Performance & Risk Committee. Krista received a B.A. in Economics from New York University.



As General Counsel of Orchard Securities, LLC, **Cameron Hellewell's** responsibilities focus on working with Orchard's sponsor clients and its broker-dealer selling group members in connection with the offer and sale of securities, including alternative investments through both publicly-registered, non-traded programs and private placements. He also assists Orchard's Chief Compliance Officer with respect to Orchard's regulatory compliance, and works closely with Orchard's outside counsel and the legal counsel to sponsors on a wide range of issues. Prior to joining Orchard, Mr. Hellewell's professional experience includes

working for an international commercial real estate company, and a commercial real estate development company that developed assisted living centers, retail projects and office buildings. Mr. Hellewell earned his Bachelor's degree from the University of Utah and his juris doctorate from the Case Western Reserve University School of Law. He is also a member of the Utah State Bar, the District of Columbia Bar, and the American Bar Association.



Crissy Escamilla is Principal Analyst of the Complex Review Team in FINRA's Advertising Regulation Department. Ms. Escamilla's primary responsibility is reviewing communications with the public involving complex products and novel regulatory concerns. Ms. Escamilla joined FINRA in 2007 and rejoined in 2020. She previously worked at Foreside, Kestra Financial, Florida Office of Financial Regulation Division of Securities, TIAA, and State Farm. Ms. Escamilla received a Bachelor's degree in Human Resource Management from Park University and holds the Chartered Financial Consultant® and Chartered Life Underwriter® designations.

2022 FINRA Advertising Regulation Conference
October 20-21, 2022 | Washington, DC | Hybrid Event

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Panelists

○ Moderator

- Kimberly Flanders, Associate Director, FINRA Advertising Regulation

○ Panelists

- Minh Le, Director, Private Placements, FINRA Corporate Financing
- Krista Harvey, CFA, CIPM, Director, Global Industry Standards | Ethics, Standards, Professional Conduct, CFA Institute
- Kristina Shaw, Principal Analyst, FINRA Advertising Regulation
- Cameron Hellewell, General Counsel, Orchard Securities, LLC
- Crissy Escamilla, Principal Analyst, FINRA Advertising Regulation



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Resource List for IRR Calculations and the GIPS Standards

Please note that the information in the CFA Institute materials is the opinion of CFA Institute and has not been adopted or endorsed by FINRA.

1) CFA Institute Checklist for FINRA Regulatory Notice 20-21 and GIPS Standards IRR and Metrics Calculations

Where a program has ongoing operations, FINRA interprets Rule 2210 to permit the inclusion of IRR if it is calculated in a manner consistent with the Global Investment Performance Standards

(GIPS) and includes additional GIPS-required metrics such as paid-in capital, committed capital and distributions paid to investors. Below is the checklist of the requirements which must be met to calculate an IRR and the other required metrics in a manner consistent with the GIPS Standards.

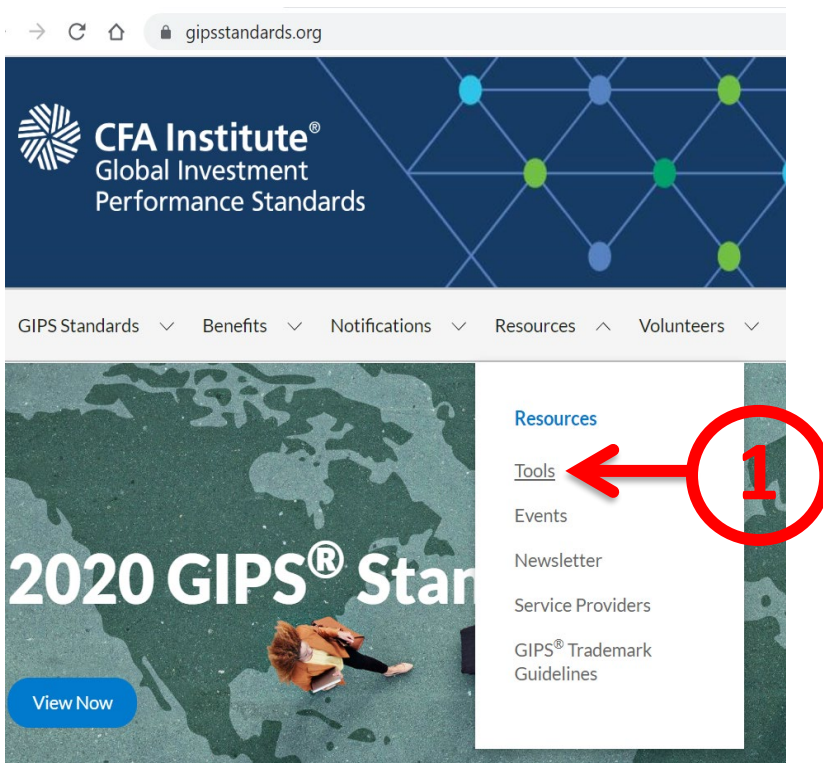
Below the checklist are instructions of how to access an electronic version on the GIPS Standards website.

Item No.	Question
1	Fair value was used to determine the terminal value.
2	Trade date accounting was used.
3	Income on fixed income investments was accrued.
4	The IRR includes returns from cash and cash equivalents.
5	The IRR reflects the deduction of transaction costs.
6	The IRR is a since-inception annualized IRR. Periods less than a year must not be annualized (see "Unannualized returns < 1 yr" tab)
7	For periods prior to 1/1/20, cash flows are reflected on at least a quarterly basis.
8	For periods after 1/1/20, cash flows are reflected on a daily basis.
9	If the IRR is a composite net return, it reflects the deduction of investment management fees, including any performance based fees and carried interest.
10	If the IRR is a pooled fund net return, it reflects the deduction of all pooled fund fees and expenses, including any performance-based fees and carried interest.
11	Since-inception paid-in capital is calculated using all capital inflows since inception, including any distributions that were subsequently recalled and reinvested.
12	Since-inception distributions is calculated using all cash and stocks distributed to investors since inception.
13	Cumulative committed capital is calculated using total pledges of capital by investors, both drawn and undrawn.

- 14 TVPI is calculated as: (since-inception distributions plus residual value)/since-inception paid-in capital.
- 15 DPI is calculated as: since-inception distributions/since-inception paid-in capital.
- 16 The PIC multiple is calculated as: since-inception paid-in capital/cumulative committed capital.
- 17 RVPI is calculated as: residual value/since-inception paid-in capital.
- 18 If a subscription line of credit (LOC) was used, an IRR calculated with the subscription LOC is presented.
- 19 If a subscription line of credit (LOC) was used, comparable (gross or net) IRRs calculated without the subscription LOC are presented, unless the LOC was 1) repaid within 120 days using committed capital drawn down through a capital call, and 2) it was not used to fund distributions.

How to access the checklist on the GIPS Standards website:

Step 1: Go to gipsstandards.org, hover over the “Resources” dropdown, and select Tools



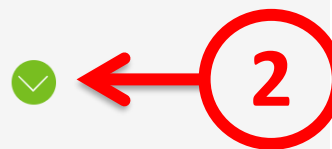
Step 2: Once on the Tools page, click the green down arrow for “Firms.”

Tools

The following documents were created to help firms, asset owners, verifiers and fiduciary management providers to UK pension schemes understand and implement the 2020 GIPS® Standards.

Firms

The following documents were created to help firms understand and implement the 2020 GIPS Standards.



Step 3: Once the list of Tools appears, scroll down until you find the link for the “CFA Institute Checklist for FINRA Reg Notice 20-21 and the GIPS Standards” xlsx document. Once you click on it, the excel file will open.

- [Model RFP Template](#) (PDF)
- [Memorandum Re: FINRA's Regulatory Notice 20-21 and References to the GIPS Standards](#) (PDF)
- [CFA Institute Checklist for FINRA Reg Notice 20-21 and the GIPS Standards](#) (XLSX)
- [Bridging the Gap - GIPS Standards and FINRA Regulatory Notice 20-21](#) (PDF)
- [Video: FINRA Regulatory Notice 20-21 and the GIPS Standards](#)
- [Survey Report of US Firms on the Distribution of GIPS Reports](#) (PDF)



2) Video: FINRA Regulatory Notice 20-21 and the GIPS Standards

CFA Institute has created a video that include an introduction to the GIPS standards, the IRR calculation requirements, and sample calculations. The video is available here: <https://players.brightcove.net/pages/v1/index.html?accountId=1183701590001&playerId=rkcysOOFe&videoId=6251046394001&autoplay=true>

This link can also be accessed on the Resources page of the GIPS standards website.

3) Permitted claims of compliance

Below are the claims of compliance that are permitted in retail communications concerning private placement offerings that are prepared in accordance with FINRA Regulatory Notice 20-21, as long as the statements are true and all of the information required by the GIPS standards is included. A full copy of the memorandum these are included in can be found here: <https://www.gipsstandards.org/wp-content/uploads/2021/07/memo-finra-reg-20-21-references-gips-standards.pdf>

For firms (i.e., issuers) that do not claim compliance with the GIPS standards:

[Insert firm name] has calculated the since-inception internal rate of return (SI-IRR) and fund metrics using a methodology that is consistent with the calculation requirements of the Global Investment Performance Standards (GIPS®). [Insert firm name] does not claim compliance with the GIPS standards. GIPS® is a registered

trademark of CFA Institute. CFA Institute does not endorse or promote [insert firm name], nor does it warrant the accuracy or quality of the content contained herein.

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4) Industry whitepaper on evaluating IRRs with additional metrics

Howard Mark's memo "You Can't Eat IRR" is a very well-known industry whitepaper that discusses how to evaluate IRRs. It is not associated with CFA Institute or FINRA.

<https://www.oaktreecapital.com/docs/default-source/memos/2006-07-12-you-cant-eat-irr.pdf>

For additional assistance or questions, please email at:

Direct e-mail: krista.harvey@cfainstitute.org

GIPS Help Desk: gips@cfainstitute.org