

Equity Investment Corporation's Advertised Performance Vs. SEC Rules

Although it claims to have been founded in 1986, in fact, today's Equity Investment Corporation was [established](#) and [registered with the SEC](#) in 2016 as BZI Partners (CRD# 283930/SEC#: 801-107945) by Msrs. Bruner, Zabor, and Irrgang, in preparation for their resignations from a firm also named Equity Investment Corporation but established and registered in 1986 (CRD # 108510 / SEC # 801-27781). To avoid confusion, we refer to the firm founded in 1986 as original-EIC and the firm founded in 2016 as BZI (n/k/a EIC).

BZI (n/k/a EIC) was not founded as a "continuation" of original-EIC under the SEC's rules (See [Release No. IA-1357](#)) and does not meet those SEC requirements. As a result, it is subject to the SEC's rules regarding portability of performance between firms.

Following the [Bruner, Zabor, and Irrgang resignations](#) on June 24, 2016, the two parties entered into an agreement whereby original-EIC's clients would be asked to assign their investment agreements to BZI (n/k/a EIC) with a promise that original-EIC's entire investment team would remain intact. As a result, BZI (n/k/a EIC) began managing original-EIC's investment strategies on October 1, 2016.

At the time of the agreement, original-EIC's [SEC attorney expressed his concern](#) that BZI (n/k/a EIC) 's use of original-EIC's performance record could be deemed misleading based on existing SEC portability guidance, particularly the guidance from [Great Lakes Advisors \(available 1992\)](#), if BZI changed original-EIC's investment team in connection with the transaction. For example, in Great Lakes, the SEC concluded that its advertising of performance from a previous firm was misleading to investors since one of the previous firm's decision-makers was not part of the investment team at Great Lakes. Similarly, BZI (n/k/a EIC) did not keep original-EIC's investment team intact for its All-Cap Value, Large-Cap Value, and Mid-Cap Value strategies (See BZI (n/k/a EIC ADV, October 4, 2016). Just as happened at Great Lakes, at BZI (n/k/a EIC) there was a change in decision-making for advertised strategies connected to a transaction between different firms.

The table below shows the overlaps between Great Lakes and BZI (n/k/a EIC). Great Lakes and BZI (n/k/a EIC) were both new firms that acquired assets from an established RIA whose client contracts were assigned to them. The red x in the left column denotes the SEC's rationale for rejecting Great Lakes' advertising of the prior firm's performance – a change in decision-making - which is also true at BZI (n/k/a EIC), shown by the red x in the right column.

Key Facts & Circumstances	Great Lakes	BZI Partners (n/k/a EIC)
Was the new firm a newly registered RIA?	✓	✓
Did the new RIA acquire assets of an established RIA?	✓	✓
Was the transaction a change in control?	✓	✓
Were previous firm's advisory agreements assigned to the new firm?	✓	✓
Did the prior firm's investment decision-making continue at new firm?	✗	✗
Did the prior firm's lead PM continue in charge of decisions?	✓	✗
Did the prior firm's portfolio characteristics remain intact?	✓	✗
Did the new firm disclose that performance was from another entity?	✓	✗

At Great Lakes, the previous firm's lead PM and portfolio characteristics remained in place, and Great Lakes disclosed that the results were achieved at a predecessor firm. Since these additional facts supporting Great Lakes' advertising are lacking at BZI (n/k/a EIC), the basis for its advertising of original-EIC's track record is less than that of Great Lakes'.

In December 2020, the SEC issued updated marketing rules ([Release IA-5653](#)), codifying prior no-action letter guidance regarding track record portability. On page 232, the release states that *"a person or group of persons is primarily responsible for achieving prior performance results if the person makes or the group makes investment decisions."*

At original-EIC, while consensus among the investment team members was a goal, it was not required. Only one individual (Jim Barksdale) exercised final decision authority, that is, the authority to veto ideas put forward by other members (See [original-EIC authority video](#)). Thus, Barksdale was the individual "primarily responsible" for original-EIC's investment performance for all strategies but was not on BZI (n/k/a EIC) 's investment team for the All-Cap Value Large-Cap Value, and Mid-Cap Value strategies.

On pages 231-232, the SEC states:

"Investments advisers will be prohibited from displaying predecessor performance in an advertisement, unless the following requirements are satisfied:

(A) the person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;

(B) the accounts managed at the predecessor investment adviser are sufficiently similar to accounts managed at the advertising adviser that the performance results would provide relevant information to investors;

(C.) all accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any prescribed time periods; and

(D) the advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.

BZI (n/k/a EIC) 's advertising of original-EIC's performance fails to meet requirements A, B, and D. The deficiency in meeting requirement A, that is, the lack of continuity of the individual primarily responsible for original-EIC's results for its All-Cap, Large-Cap, and Mid-Cap Value strategies, was reviewed above.

Regarding requirement B, BZI (n/k/a EIC) 's portfolio characteristics are not *"sufficiently similar"* to original EIC's, so *"the performance information would provide relevant information to investors."* The change in portfolio characteristics evidences this, that is, instead of original-EIC's documented historical record of offering portfolios with above-benchmark return on equity (ROE) and growth and below-benchmark debt levels (see video of [original-EIC's style history](#)), BZI (n/k/a EIC) 's portfolios have below-benchmark ROE and growth, and above-benchmark debt levels.

Regarding requirement D, BZI (n/k/a EIC) fails to disclose that its advertised performance was achieved from accounts managed at another entity and instead misleads investors to believe it is the same firm as the firm founded in 1986, that is, original-EIC ([See BZI \(n/k/a EIC\) GIPS disclosures.](#))

Conclusion: While the recommended course of action was for BZI (n/k/a EIC) to either keep original-EIC's investment team intact, as stated in the letters to clients requesting the assignment of their agreement, or obtain an SEC no-action letter approving its advertising from original-EIC, BZI (n/k/a EIC) decided it would instead "beg forgiveness" if the SEC reached a similar conclusion as in Great Lakes.

The SEC's 2020 marketing rules further codified and clarified the SEC's performance portability requirements. BZI (n/k/a EIC) does not appear to meet three of the four stipulations for advertising performance from original-EIC for its All-Cap, Large-Cap, and Mid-Cap Value strategies.

Professionals wishing to avoid the potential consequences from misleading clients with improper performance claims should consult their SEC counsel to confirm that any performance presented from original-EIC for the period 1/1/1986 to 9/30/2016 for its All-Cap, Large-Cap, and Mid-Cap Value strategies complies with the SEC's portability rules.