

# ADVERTISING CHECKLIST

The Company's advertising practices are regulated by the SEC under *Section 206 of the Advisers Act and equivalent state anti-fraud provisions*, which generally prohibit the Company from engaging in fraudulent, deceptive, or manipulative activities. The rules thereunder also prohibit the making of any untrue statement of a material fact or any statement that is otherwise false or misleading.

**NOTE:** This checklist is not meant to be exhaustive, and compliance with items on this checklist does not provide a safe harbor. All Advertisements must be reviewed carefully for potential violations of Section 206 of the Advisers Act and other applicable federal & state rules.

**Advertisement Description:** \_\_\_\_\_

An Advertisement is defined as:

Any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers:

- (1) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or
- (2) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy and sell, or
- (3) Any other investment advisory service with regard to securities. This definition includes standardized forms, form letters, the Company's brochures, web site, or any other materials designed to maintain existing clients or to solicit new clients.

A copy of the advertisement and supporting documentation has been attached. It meets the foregoing definition.

## General Prohibitions and Exceptions

**(I) Testimonials** - A favorable statement or form of endorsement as to the adviser's performance or services.

The Advertisement does not contain testimonials of any kind (if true skip remainder of this section)

The Advertisement contains testimonials, and meets the following conditions:

The Advertisement includes a bona fide, unbiased third-party report (if true skip remainder of this section)

**Or**

The Advertisement includes a client survey conducted by an unbiased third party service provider and the survey results meet all of the following conditions:

The results represent a valid sample

The results do not involve subjective analysis

Positive or negative results are not favored

The results are otherwise consistent with regulatory requirements

The Advertisement includes a (full or partial) list of advisory clients and all of the following conditions have been met:

Each client named has consented to the Adviser's use of their name in the advertisement

The Adviser has not used performance-based criteria to determine which clients to include in the list

The list includes a statement disclosing the objective criteria used to determine which clients to include on the list

The list includes the following disclaimer: "It is not known whether the listed clients approve or disapprove of the Adviser or the advisory services"

**(II) Ratings**

The Advertisement does not contain ratings of any kind (if true skip remainder of this section)

The Advertisement contains ratings, and meets all of the following conditions:

## Ratings (cont.)

- The rating does not emphasize favorable client responses or ignore unfavorable client responses
- The rating represents all, or a statistically valid sample, of the client responses
- The questionnaire sent to clients was not prepared to produce any pre-determined results that could benefit any adviser
- The questionnaire was structured to make it equally easy for a client to provide a negative or positive response
- The research firm did not perform any subjective analysis of the survey results, but rather assigned numerical ratings after averaging the client responses for each adviser

Any rating, whether based primarily on client evaluations or otherwise, should adhere to all of the following conditions in order to avoid being deemed false or misleading under Rule 206(4)-1(a)(5):

- The advertisement discloses the criteria on which the rating was based
- Adviser is not aware of undisclosed facts that would call into question the validity of the rating or appropriateness of advertising the rating (e.g., adviser received numerous client complaints relating to rating category or areas not included in the survey)
- Adviser has disclosed unfavorable ratings (if any) when disclosing favorable ratings
- The advertisement does not state or imply that adviser was a top-rated adviser in a category when it was not rated first in that category
- The advertisement discloses clearly and prominently the category for which the rating is calculated or determined, the number of advisers surveyed in that category, and the percentage of advisers that received that rating
- The advertisement discloses that the rating may not be representative of any one client's experience because the rating reflects an average of all, or a sample of all, of the experiences of the adviser's clients
- The advertisement discloses that the rating is not indicative of the adviser's future performance
- The advertisement discloses prominently who created and conducted the survey, and (if applicable) that the adviser paid a fee to participate in the survey

## (III) Past Recommendations

- The Advertisement does not include any past specific recommendations (if true skip remainder of this section)

**It is generally not permitted to provide partial lists of past specific recommendations accompanied by an offer to provide a complete list.**

The Advertisement includes performance-based past specific recommendations, and meets all of the following requirements:

- The Advertisement does not include all recommendations made by Adviser within the past year or more and the list of recommendations includes all of the following:
  - Each page of the advertisement discloses that the holdings identified do not represent all of the securities purchased, sold, or recommended for advisory clients and that past performance does not guarantee future results;
  - The Calculation will take into account consistently the weighting of every holding in the representative account that contributed to the account's performance during the Measurement Period, and the Charts will reflect consistently the results of the Calculation;
  - Each Chart's presentation of information and number of Holdings will be consistent from Measurement Period to Measurement Period;
  - The Charts will show no fewer than ten Holdings, including an equal number of positive and negative Holdings;
  - The Charts will disclose how to obtain: (i) the Calculation's methodology; and (ii) a list showing every holding's contribution to the overall account's performance during the Measurement Period;
  - Each Chart will include all information necessary to make the Chart not misleading, including presenting the best- and worst-performing Holdings on the same page with equal prominence, and with appropriate disclosure in close proximity to the performance information; and
  - Upon request, records will be made available to the SEC that evidence: (1) the criteria used to select the specific securities listed in each Chart (i.e., the Calculation); (2) a list showing the contribution of each holding in the representative account to the overall account's performance during the Measurement Period; and (3) all supporting data necessary to demonstrate the calculation of the Chart's contribution analysis and to demonstrate the appropriateness of the Holdings included in each Chart.

**Or**

- The Advertisement includes all recommendations made by Adviser within the past year or more and the list of recommendations includes all of the following:
  - The name of each security recommended
  - The date and nature of the recommendation (buy or sell, or hold)
  - The market price at the time the recommendation was made
  - The price at which the recommendation was to be acted upon
  - The list includes the following disclosure, in typeface at least as large as the largest print used in the text, on the front page of the list: *"It should not be assumed that recommendations made in the future will be profitable nor should they be expected to equal the performance of the securities in this list."*
  - The current market price of the security

## Past Recommendations (cont.)

The Advertisement includes non-performance based past recommendations and meets all of the following conditions:

- The partial list of recommendations was selected using consistent and objective non-performance based criteria
- Same selection criteria are used each year (or relevant time period)
- The list does not disclose profits or losses
- The partial list includes appropriate disclosures (for example: "The securities identified and described do not represent all of the securities purchased, sold, or recommended for client accounts. The reader should not assume that an investment in the securities identified was or will be profitable.")
- Supporting records are maintained that evidence all of the following:
  - The complete list of securities recommended by the adviser in the preceding year for the specific investment category covered by the advertisement;
  - The information set forth in Rule 206(4)-1(a)(2) for each recommendation; and
  - The criteria used to select the specific recommendations listed in the advertisement

### (IV) Use of Graphs, Charts, and Formulas

- The Advertisement does not contain graphs, charts, formulas or other devices which can be used to determine which securities to buy or sell or when to buy or sell them;
- Or**
- The Advertisement does contain a graph, chart, formula or other device which can be used to determine which securities to buy or sell or when to buy or sell them, and prominently discloses the limitations, difficulties, and risks regarding its use.

### (V) Free Services

- The Advertisement does not contain an offer for any free services whatsoever;
- Or**
- The Advertisement does contain an offer for free services and that service will be offered entirely free, without any direct or indirect condition or obligation - (Note: The SEC has allowed advisers to provide satisfaction guarantees to clients, including waiver of management fees, provided that such guarantees are not tied to account performance. See Trainer, Wortham & Co., Froy, Revy Investment Co., Starbuck, Tisdale & Assoc., SEC No-Action Letter, December 6, 2004)

### (VI) Untrue Statements

- The Advertisement does not contain any untrue statements of a material fact, or which is otherwise false or misleading. The standard applied in making this determination is the impact the Advertisement might have on an unskilled unsophisticated investor as opposed to a careful and analytical person.

## *Advertising Performance*

### (I) Actual Performance

- The Advertisement does not include actual performance results; (if true skip remainder of this section)
- Or**
- The Advertisement includes actual performance results for all clients; (if so, this must be clear in the advertisement)
- Or**
- The Advertisement includes actual performance for only a select group of clients and the basis for that selection and the effect of this selection (if material) is disclosed.

### (II) Model and Actual

- The Advertisement does not contain model or actual performance data (if true skip remainder of this section)

The Advertisement includes model or actual performance data and meets all of the following conditions:

- Discloses the effect of material market or economic conditions on the results portrayed
- Performance results reflect the deduction of all advisory fees, brokerage commissions or other client paid expenses
- Discloses whether and to what extent the performance results reflect the reinvestment of dividends and interest
- Discloses all material relevant factors when comparing results to an index

## Model and Actual (cont.)

- Discloses all material conditions, objectives, and investment strategies used to obtain the performance advertised
- Discloses the potential for loss where a claim is made for the potential for profit
- Results portrayed relate only to a select group of Adviser's clients (e.g., representative account), the basis on which the selection was made, and effect of practice on results portrayed, if material
- Discloses any other material factors that affected performance

For Advertisement containing model performance only, all of the following additional disclosures are included:

- All limitations inherent in model results, including in particular that the results do not represent actual trading
- Where applicable, any material changes in the conditions, objectives or investment strategies of the model portfolio during the time period portrayed and the effect of the change on the results portrayed
- Where applicable, that some or all of the securities contained or investment strategies used with respect to the model results are not currently offered by the adviser
- Where applicable, that the Adviser's clients had actual investment results, which were materially different from those shown in the model

## (III) Net vs. Gross of Fees

- The Advertisement does not contain performance data (if true skip remainder of this section)

- The performance results reflect the deduction of advisory fees, brokerage commissions, and other client paid expenses  
**Or**
- The performance results reflect the deduction of advisory fees and brokerage commissions, but do not include the deduction of fees paid to a custodian as the client generally selects and pays the custodian fee  
**Or**
- The performance results are gross of fees and meet the following requirements:
  - The performance presentation will be used exclusively in one-on-one presentations to wealthy individuals, pension funds, universities, consultants, and other institutions and includes all of the following disclosures:
    - It is labeled "one-on-one presentation" and states that performance reported is gross of advisory fees
    - The client's return will be reduced by the advisory fees and other expenses the client may incur
    - The Adviser's fees are disclosed in Part II of the Adviser's Form ADV
    - A representative example (e.g. a table, chart, graph, or narrative) showing the effect of the compounded advisory fees over a number of years on the value of the client's portfolio
- The Advertisement presents performance returns both gross and net of fees and both sets of figures meet all of the following additional requirements:
  - Both receive equal prominence
  - Both are presented in a format that permits easy comparisons
  - Both are accompanied by sufficient disclosure, such as a specific reference to the lack of inclusion of investment advisory fees and other expenses to prevent the numbers from being misleading
- The Advertisement represents performance returns net of fees using a "model" advisory fee rather than the actual fees, and all of the following requirements are met and disclosures provided:
  - The "model" advisory fee used is equal to the highest fee charged to any account employing the particular investment strategy during the performance period presented
  - If the advertisement presents net performance that includes wrap and non-wrap fee accounts, the model fee must be equal to the highest fee charged for each type of account
  - That the performance data reflects the deduction of the highest fee charged for the specific investment strategy for the performance period represented
  - That the actual advisory fees may vary among clients with the same investment strategy
  - That the Adviser's fee schedules are available in Form ADV Part II or upon request

## (IV) Hypothetical Back-tested Model Performance - (Note: The SEC staff regards backtesting as highly suspect. Such information should only be presented to sophisticated (non-retail) clients)

- The Advertisement does not include hypothetical back-tested performance (if true skip remainder of this section)

The Advertisement includes hypothetical backtested performance and includes all of the following disclosures:

- The limitations inherent in hypothetical, backtested results, particularly that the performance results do not represent the results of actual trading using client assets, but were achieved by means of retroactive application of a backtested model that was designed with the benefit of hindsight

## Hypothetical Back-tested Model Performance (cont.)

- That backtested performance information may not reflect the impact that material economic or market factors might have had on adviser's decision-making if adviser were actually managing client assets
- That backtested performance was derived from the retroactive application of a model with the benefit of hindsight (e.g., the adviser began offering the service after the performance period referenced in the advertisement)
- Whether the trading strategies retroactively applied were not available during the periods presented
- If applicable, that the conditions, objectives, or investment strategies of the timing model changed materially during the time period portrayed in the advertisement and, the effect that such change had on the results portrayed
- That any of the securities contained in, or the investment strategies followed with respect to, the hypothetical portfolio do not relate, or only partially relate, to the type of advisory services currently offered by the adviser
- If applicable, that adviser's clients had actual investment results materially different from the hypothetical results portrayed
- Whether the advertised performance reflects the deduction of advisory fees, brokerage or other commissions, mutual fund exchange fees, and other expenses a client would have paid
- All material facts relevant to any comparison between backtested performance and its benchmark
- Potential for loss as well as profit

## (V) Portability of Performance

- The Advertisement does not contain any performance information from another adviser (if true skip remainder of this section)

The Advertisement contains performance from another adviser and all of the following have been met:

- Persons managing accounts at the successor adviser were *primarily responsible* for the past performance
- Predecessor's accounts are so similar to currently-managed accounts that the performance is *relevant* to prospects of the successor adviser
- All prior accounts managed in a substantially similar manner are shown, unless their exclusion would not result in materially higher performance (i.e. no cherry picking)
- The Advertisement complies with SEC staff interpretations and includes relevant disclosures (including that the performance results were from accounts managed elsewhere)
- The new adviser has the records to substantiate the performance information

## Additional Considerations

## (I) Article Reprints

- The Advertisement does not contain any article reprints (if true skip remainder of this section)

Reprints of newspaper or periodical articles about an adviser, or its personnel, are subject to the advertising rules and must not be misleading. Continuing relevance must also be ensured.

- Problem statements have been redacted where publisher allows modification
- Or**
- Legends have been used to (check all that apply):
    - Correct inaccuracies
    - Update information
    - Fill in gaps (provide net performance if article discusses only gross)

In addition, article reprints, drafted by an unbiased third-party that discuss the investment adviser are permitted, so long as the reprint includes all of the following provisions:

- Does not imply the experience of advisory clients
- Does not imply the possibility of a prospective client having an investment experience similar to that of prior clients
- Does not imply the adviser's competence, when there are additional facts that, if disclosed, would imply different results from those suggested in the article
- Is accompanied by disclosure or additional information that, in the absence of which, would otherwise make the article false or misleading

**(II) Web Sites**

Information provided on an adviser’s web site is subject to the SEC advertising rules. It may also be subject to state regulation. Advertising or providing advisory services on the Internet may also result in a firm having to register the firm and/or investment adviser representatives in states or foreign jurisdictions unless certain safeguards, checkpoints, or disclosures are provided. Check state regulations for specific requirements.

***Final Review***

Where appropriate, the following disclosure has been included: “The information in this material is from sources we believe reliable, but we do not represent that it is accurate or complete and should not be relied on as such.”

The Advertisement is consistent with the fees and services described in the Adviser’s Form ADV

The Advertisement does not contain misleading designations, titles, or representations that may include but are not limited to the following:

- The initials RIA appear after the name of an individual or the firm
- The adviser represents itself with the term “investment counsel” although a substantial portion of its business does not consist of providing “investment supervisory services” (i.e., continuous investment advice based on the individual needs of each client), usually associated with persons with substantial funds requiring continuous supervision.
- The advertisement has language that implies that the adviser has been sponsored, recommended, or approved, or that its abilities have been passed upon by the federal government
- Unqualified designations that imply an adviser’s expertise in senior’s financial matters

The Advertisement has been reviewed with a critical eye as to any inferences, implications, or predictions

The sophistication of the audience has been considered (in appraising advertisements by investment advisers, examiners will not only look to the effect that an advertisement might have on careful and analytical persons but also the advertisement’s possible impact on those unskilled and unsophisticated in investment matters)

Dates, benchmarks, and sources have been described

Facts and circumstances have been considered

Only statements, facts, and figures that can be substantiated have been included

Disclosures have been made with sufficient prominence and detail

If required, the Advertisement has been filed with the appropriate State(s)

If required, GIPS compliance has been reviewed according to the most recent GIPS standards

**Additional Review Comments**

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\_\_\_\_\_  
**Print Reviewer Name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

This advertisement has been  approved  denied

If applicable, reason(s) for rejection \_\_\_\_\_

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