

**WAC 460-24A-100 Advertisements and written client communications by investment advisers.** If you are an investment adviser or investment adviser representative, it is an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you, directly or indirectly, to publish, circulate or distribute any advertisement or written client communication (including advertisements and written communications directed to prospective clients) if the advertisement or written client communication:

(1) Refers, directly or indirectly, to any testimonial of any kind concerning you or concerning any advice, analysis, report or other service rendered by you;

(2) Refers, directly or indirectly, to any past specific recommendations you made which were or would have been profitable to any person: Provided, however, That this clause under this subsection (2) does not prohibit you from setting out or offering to furnish a list of all recommendations you made within the immediately preceding period of not less than one year if such advertisement or written client communication, and such list if it is furnished separately:

(a) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(b) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list".

(3) Represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement or written client communication the limitations thereof and the difficulties with respect to its use;

(4) Contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly;

(5) Contains past performance data, unless the advertisement or written client communication is accurate and discloses all material facts necessary to ensure that the advertisement or written client communication is not misleading. An advertisement or written client communication containing past performance data must adhere to the following standards:

(a) The advertisement or written client communication must disclose the following:

(i) The effect of material market or economic conditions on portrayed results;

(ii) The effect on performance of fees, commissions, or other client paid expenses;

(iii) The effect of dividends and earnings on the results portrayed;

- (iv) The potential for both profit and loss;
  - (v) Any material conditions, objectives, or investment strategies used to obtain the performance result; and
  - (vi) Any additional information reasonably necessary to ensure that the data is not misleading;
- (b) The advertisement or written client communication must include the most recently available results computed using an appropriate time frame;
  - (c) Where the performance results are only for a selected group of clients, the advertisement or written communication must disclose the basis on which an objective selection was made; and
  - (d) This subsection (5) does not apply to client-specific account past performance data in an account statement that an unaffiliated qualified custodian generates and sends directly to the client;
- (6) Compares past performance results to an index or other portfolio, unless the comparison index or other portfolio is a relevant comparison and the advertisement or written client communication includes full disclosure of the material facts regarding the comparison;
  - (7) Contains "backtested" or "hypothetical model" performance figures. Backtesting involves developing a strategy or model then applying the strategy or model to past historical performance. Hypothetical modeling involves creating a hypothetical portfolio and then monitoring it based upon forward-looking strategies and measuring it as if it constitutes a real portfolio;
  - (8) Fails to include the full legal name of the investment adviser;
  - (9) Includes information inconsistent with the information disclosed by an investment adviser on Form ADV or by an investment adviser representative on Form U4;
  - (10) Uses the acronyms "IA," "IAR," or "RIA" unless they are defined;
  - (11) Uses senior-specific certifications or professional designations in a manner inconsistent with chapter 460-25A WAC;
  - (12) Fails to provide a citation or attribution for any data or other information presented from outside sources; or
  - (13) Contains any omission or untrue statement of a material fact, or which is otherwise false or misleading.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 19-03-133, § 460-24A-100, filed 1/18/19, effective 2/18/19; WSR 14-13-068, § 460-24A-100, filed 6/12/14, effective 7/13/14; Order 304, § 460-24A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]