**Advertising Restrictions**

Rule 206(4)-1 under the Advisers Act prohibits SEC-registered investment advisers from using any advertisement that contains any untrue statement of material fact or that is otherwise misleading. The rule broadly defines "advertisement" to include 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, that offers any investment advisory service.

In addition, an advertisement may not:

* use or refer to testimonials (which include any statement of a client's experience or endorsement);
* refer to past, specific recommendations made by the adviser that were profitable, unless the advertisement sets out a list of all recommendations made by the adviser within the preceding period of not less than one year, and complies with other, specified conditions;
* represent that any graph, chart, formula, or other device can, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell such securities, or can assist persons in making those decisions, unless the advertisement prominently discloses the limitations thereof and the difficulties regarding its use; and
* represent that any report, analysis, or other service will be provided without charge unless the report, analysis, or other service will be provided without any obligation whatsoever.

The Division takes the position that an adviser may advertise its past performance (both actual performance and hypothetical or model results) only if the advertisement meets certain conditions and restrictions. An advertisement using performance data must disclose all material facts necessary to avoid any unwarranted inference. Among other things, an investment adviser may not advertise its performance data if the adviser: (1) fails to disclose the effect of material market or economic conditions on the results advertised; (2) fails to disclose whether and to what extent the advertised results reflect the reinvestment of dividends or other earnings; or (3) suggests or makes claims about the potential for profit without also disclosing the potential for loss.

In addition, generally an adviser may not advertise gross performance data (i.e., performance data that does not reflect the deduction of various fees, commissions, and expenses that a client would pay) unless the adviser also includes net performance information in an equally prominent manner. The staff has taken the position, however, that an adviser may provide gross performance information, accompanied by appropriate disclosure regarding the impact of fees and expenses, in certain limited circumstances that present minimal risk that the client will not understand the impact of fees and expenses, such as when the client is a sophisticated institution, and the adviser presents the information to the client "one-on-one." Neither the Commission nor the Division will pre-approve advertisements for compliance with the above requirements, although advertisements are subject to review during Commission inspections.