

Understanding the potential and limits of investment adviser advertising

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ABSTRACT

A performance track record: It is the lifeline to an investment manager's ability to attract prospects and to gain interest in the consultant community. In the increasingly competitive investment management industry, the effectiveness of an adviser's advertising or marketing material can have a significant impact on the success of its business.

Recognising the potential for fraud or abuse with investor communications, the US Securities and Exchange Commission (SEC) has promulgated general anti-fraud provisions governing the activities of investment advisers and managers of pooled investment vehicles. Most of the applicable guidance regarding the regulatory requirements for investment adviser performance advertising, however, is in the form of various

SEC No-Action Letters, which have been issued over the past several decades. For compliance officers, this presents a challenge in that the framework to advisory compliance requirements governing performance advertising rests primarily in learning from the enforcement actions taken against others, or by referencing the labyrinth of No-Action Letters, which have not yet been consolidated into any rulemaking by the SEC.

This paper seeks to provide guidance to the myriad of considerations for advisers to contemplate when reviewing performance advertising. Recognising the legal and regulatory limitations applicable to investment adviser advertisements are key to a firm's ability to successfully grow the business without falling foul of their compliance obligations. By taking a practical approach to understanding regulations surrounding advertising and sales literature, investment advisers may be able to develop essential internal controls for mitigating risks associated with creating effective marketing pieces while understanding the potential and limits of advertising efforts.

Keywords: *investment adviser advertisements, SEC Rule 206(4)-1, performance advertising, Investment Advisers Act of 1940, anti-fraud, disclosures, marketing materials*

BACKGROUND

Investment adviser advertising is regulated through various provisions of the



Investment Advisers Act 1940 (the 'Advisers Act'), specifically Section 206, and the rules promulgated thereunder. Section 206 is the general anti-fraud provision of the Advisers Act and Rule 206(4)-1 (the 'Advertising Rule') provides the basic legal framework for investment adviser advertising. However, complying with these requirements requires much more than a basic understanding of the anti-fraud provision and the language of the Advertising Rule.

The SEC, as a matter of policy, will not review investment adviser advertisements prior to use to determine compliance with the Advertising Rule,¹ and due to the broad reach of Section 206 and the expansive interpretations of Rule 206(4)-1, advisers are left to navigate the regulatory waters through various staff No-Action Letters, speeches by SEC personnel, and positions taken by the Commission in enforcement actions relating to advertisements.

The anti-fraud provision of the Investment Advisers Act

Section 206 is the general anti-fraud provision of the Advisers Act that applies to all investment advisers, whether registered with the SEC, a state securities authority, or not at all.² Section 206(4) makes it unlawful for any investment adviser to directly or indirectly engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative and gives the SEC broad rulemaking authority to prevent such conduct by investment advisers.³

Unlike the anti-fraud provisions of other federal securities laws, Section 206 does not require a transaction in order for a violation to occur. Section 17(a) of the Securities Act 1933 (the 'Securities Act') prohibits fraud in connection with the 'offer or sale' of securities.⁴ Similarly, the most commonly invoked anti-fraud provision of the federal securities laws, Section 10(b) of the Securities Exchange Act 1934 (the

'Exchange Act') and Rule 10b-5 promulgated thereunder, makes it unlawful to engage in fraudulent or manipulative practices 'in connection with the purchase or sale of a security'.⁵ Section 206(4) of the Advisers Act, on the other hand, prohibits 'any act, practice, or course of business [by an investment adviser] which is fraudulent, deceptive, or manipulative'.⁶ The US Supreme Court has further held that Section 206 imposes a fiduciary duty on investment advisers by operation of law, and accordingly, an adviser's conduct is subject to a much higher standard than that imposed on traditional commercial transactions.⁷ Moreover, there is generally no requirement for a finding of scienter (intent or recklessness) in order to impose liability under Section 206, as is required for Rule 10b-5. The broad language of Section 206 and the expansive interpretation given to it by the SEC and the courts provides the SEC with a significant amount of freedom to prevent abuse with regard to all activities of investment advisers.

The Advertising Rule

In addition to broadly prohibiting fraudulent conduct by investment advisers, Section 206(4) gives the SEC rulemaking authority to prevent such practices. Pursuant to this grant of authority, the SEC adopted Rule 206(4)-1, which sets forth certain advertising activities that are deemed to violate the anti-fraud provisions of the Advisers Act. The Rule reflects the SEC's belief that investment adviser advertisements should be subject to a higher level of scrutiny than those for persons selling other services, due to the fiduciary nature of the advisory relationship and the fact that historically, clients and prospective clients of investment advisers may largely be unsophisticated in investment matters.⁸ Accordingly, the SEC holds advisers accountable for any and all information contained in advertising materials.

The wide scope of the Rule can be seen by the definition given to the term 'advertisement'. The SEC defines the term to include any written communication addressed to more than one person or any notice or announcement in any publication or by radio or television, which offers any analysis, report, or publication regarding securities, any graph, chart, formula or other device for making securities decisions, or any other investment advisory services regarding securities.⁹ This broad definition generally includes materials designed to maintain existing clients or solicit new clients, and may even include an adviser's disclosure brochure delivered pursuant to Rule 204-3.¹⁰ Moreover, the SEC is not necessarily limited to a single interpretation of the definition of advertisement, and has stated that whether any particular communication constitutes an advertisement depends upon all of the facts and circumstances and will be determined on a case-by-case basis.¹¹

SPECIFIC PROHIBITIONS

Rule 206(4)-1 describes four specific categories of advertising that are deemed to constitute a fraudulent, deceptive, or manipulative act. These specific prohibitions include:

1. references to any testimonial concerning the adviser, its advice, or any other services offered by the adviser;
2. references to past specific recommendations of such investment adviser, unless certain requirements are met;
3. representations that any graph, chart, formula or other device can be used to determine which securities to buy or sell, or will assist in making decisions as to the purchase or sale of securities without disclosing the applicable limitations and difficulties with respect to its use; and

4. statements to the effect that any report, analysis, or other service will be furnished free or without charge, unless it is, or will be, furnished entirely free and without any condition or obligation.¹²

The Rule also contains a final catch-all provision that broadly prohibits all advertisements that contain 'any untrue statement of a material fact, or which [are] otherwise false or misleading'.¹³

Testimonials

The prohibition against testimonials is based on the SEC's view that advertisements containing testimonials are inherently misleading because advisers will only publish those that are favourable to the adviser and/or its activities and may give the misleading impression that the experience of the individual giving the testimonial is typical of the experience of all of the adviser's clients.¹⁴ Although not defined in the Rule, the SEC has interpreted the term 'testimonial' to include statements by any former, existing or prospective client, which refer to a favourable experience with the adviser or otherwise endorse the adviser.¹⁵

Article reprints

Notably, the SEC has stated that *bona fide*, unbiased third-party reports that discuss an adviser's performance are not testimonials and are thus not prohibited by the Rule unless the report includes a statement of a client's or investor's experience with, or endorsement of, the adviser.¹⁶ Generally, advisers may distribute article reprints discussing performance or past recommendations of an adviser, but advertisements containing such third-party information are still subject to the general catch-all provision and must not be deceptive or misleading. Accordingly, if the advertisement containing the article reprint implies something about the experience of the

adviser's clients or the possibility of a prospective client having a similar experience to prior clients, or creates an inference regarding the adviser's competence, it may be deemed to be a violation of the Advertising Rule if there are additional facts that if disclosed would imply different results.¹⁷ It follows that advisers must use care when preparing advertisements containing third party reports, and should thoroughly redact any problematic statements and use legends to correct any inaccuracies and to disclose material information not contained in the article.

Ratings

The SEC views an independent, third-party rating that relies primarily on client evaluations of an adviser as a testimonial because such a rating is 'an implicit statement of clients' experience with an adviser'.¹⁸ However, where the rating considers client responses about the adviser when formulating the rating, but the client responses are an insignificant factor, relative to other criteria, the rating will not be considered a testimonial.¹⁹ Accordingly, in determining whether a rating constitutes a testimonial, advisers should consider contacting the third party in order to assess the criteria used to formulate the rating and the significance of client evaluations in the rating's formulation. Even where a third-party rating is deemed to be a testimonial, the SEC has permitted them to be used in advertisements where circumstances exist that ensure that favourable client responses are not emphasised and unfavourable client responses are not ignored.²⁰

Client lists

An advertisement that does no more than identify certain clients of the adviser is not a testimonial. The list must not emphasise favourable comments of the adviser or ignore unfavourable ones, and remains

subject to the general anti-fraud prohibition against presenting such a list in a false or misleading manner.²¹ More specifically, the SEC has stated that including a partial client list in an advertisement is generally permitted where:

- the adviser does not use performance-based information to decide which clients to include;
- each list is accompanied by a disclaimer stating that it is not known whether the listed clients approved or disapproved of [the adviser] or the advisory services provided; and
- each list includes a statement disclosing the objective criteria used to formulate the list.²²

Beyond these specific issues to consider when using a partial client list, advisers should be cognisant of their fiduciary and ethical obligations and take steps to ensure that any prospective client does not misinterpret the list or its contents. Additionally, advisers should obtain a client's consent prior to including their name on a list, which is advisable both from an ethical standpoint and as part of the adviser's obligation to properly safeguard clients' non-public, personal information under Regulation S-P.

Past specific recommendations

Rule 206(4)-1 also specifically prohibits advertisements that refer to the adviser's past profitable recommendations unless the advertisement sets out or offers to furnish a list of all recommendations made by the adviser within at least the prior one-year period.²³ This provision of the Rule is based on the SEC's concern that 'cherry picking' (the practice of emphasising profitable recommendations while ignoring unprofitable ones) is inherently misleading and deceptive.²⁴ Additionally, the advertisement or list, if

furnished separately, must include the following information:

1. the name of each such security recommended;
2. the date and nature of each such recommendation;
3. the market price at that time;
4. the price at which the recommendation was to be acted upon;
5. the market price of each security as of the most recent practicable date; and
6. the following cautionary legend on the first page of the list in typeface at least as large as the largest print used in the text: '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.'

Use of objective, non-performance-based criteria

The SEC has permitted advisers to provide information in quarterly reports or advertisements about a limited number of recommendations under conditions designed to ensure the presentation would be objective and not misleading. For example, in *Franklin Management, Inc.*, the SEC permitted references to past specific securities purchased, sold, or held for client accounts so long as:

- the securities are selected based on objective, non-performance-based criteria to be consistently applied each quarter;
- the advertisement omits any discussion of the profitability of the named securities;
- the advertisement contains cautionary disclosures; and
- the adviser keeps sufficient records to make available to the SEC upon request.²⁵

The rationale for permitting such discus-

sions of past securities was that if the requirements stated above were met, the advertisement would not raise concerns over cherry-picking and misleading prospective clients about the adviser's performance.

Equal numbers of positive and negative holdings

In *TCW Group, Inc.*, the latest No-Action Letter on the topic of past specific recommendations, the SEC permitted an adviser to provide prospective and current clients with an equal number of holdings that contributed most positively and most negatively to a representative account's performance where such recommendations are objectively chosen and include no fewer than ten total holdings.²⁶ The advertisement must include all information necessary to make the information not misleading, including presenting the list of top performers and worst performers on the same page with equal prominence. The adviser must disclose, in close proximity to the performance information, how to obtain the calculation's methodology and information reflecting each holding's contribution to the overall account's performance during the measurement period.²⁷ Finally, the adviser must include disclosures on each page containing such information that the holdings identified do not represent all of the securities purchased, sold, or recommended for advisory clients; and past performance does not guarantee future results.²⁸

PERFORMANCE ADVERTISING

Rule 206(4)-1 does not contain any specific prohibitions or requirements concerning the presentation of performance results in advertisements. Rather, the SEC regulates the means by which advisers must calculate and present their past perform-

ance through the ‘catch-all provision’ of the Advertising Rule to determine what constitutes false or misleading performance advertising. As noted above, whether a particular advertisement is false or misleading under Rule 206(4)-1(a)(5) revolves on whether ‘it implies, or a reader would infer from it, something about the adviser’s competence or about future investment results that would not be true had the advertisement included all material facts’.²⁹

Model and actual performance

In *Clover Capital Management, Inc.*, one of the most significant No-Action Letters on the subject of performance advertising, the SEC indicated various practices and disclosures that were necessary or prohibited when presenting performance information. The SEC indicated that the following practices were misleading and thus prohibited in connection with the presentation of either model or actual returns:

- Failing to disclose the effect of material market or economic conditions on the results portrayed.
- Failing to reflect the deduction of advisory fees, brokerage or other commissions, and any other expenses a client would have paid.
- Failing to disclose whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings.
- Suggesting the potential for profit without also disclosing the possibility of loss.
- Comparing results to an index without disclosing all material factors relevant to the comparison (eg, that the volatility of an index materially differs from a model portfolio).
- Failing to disclose any material conditions, objectives, or strategies used to obtain the results portrayed.³⁰

With regard to actual results, advisers

must also disclose, if applicable, that actual results portrayed relate only to a select group of the adviser’s clients, the basis on which the selection was made, and any material effect of this practice on the results portrayed.³¹

In addition to the above considerations, advisers should carefully review all performance presentations to ensure that nothing contained therein is misleading or if material information is omitted. The SEC has also stated that a disclaimer to the effect of ‘past performance is not a guarantee of future returns’ may not, in and of itself, be sufficient to cure a misleading presentation.

Model performance

Presenting performance based on trading in a model portfolio has long been viewed sceptically by the SEC. In addition to the above information that must be disclosed for actual performance results, the SEC requires advisers presenting model performance results to disclose additional information in order to avoid misleading investors. Practices that would be deemed to be misleading when presenting model performance results include failing to disclose:

- the limitations inherent in model results, particularly that model returns do not reflect actual trading and may not reflect the impact that material economic and market factors may have had on the adviser’s decision-making had the adviser actually managed client funds;
- if applicable, that the conditions, objectives, or investment strategies of the model portfolio changed materially during the time period portrayed in the advertisement and, if so, the effect of any such change on the results portrayed;
- if applicable, that any of the securities

contained in, or the strategies followed with respect to, the model portfolio do not relate, or only partially relate, to the type of advisory services currently offered by the adviser (eg, the model reflects securities that are no longer recommended for clients); and

- as applicable, that the adviser's clients had investment results materially different from the results portrayed in the model.³²

The 'net of fees' requirement

One of the most significant requirements imposed by *Clover Capital Management, Inc.* is the requirement that all performance results be presented after the deduction of advisory fees, brokerage commissions, and any other expenses that a client paid or would have paid. Presenting returns 'net of fees' is important, according to the SEC, in order to make performance results not misleading because it will show prospective clients the kind of investment experience they might have had as a client of the adviser. Where returns are presented only on a gross basis, the SEC considers the performance to be misleading because it may cause investors to infer something about the adviser that would not be true had the information about fees and expenses been disclosed.³³

The SEC has stated that an adviser may distribute advertisements containing both gross and net of fees performance so long as both are presented in an equally prominent manner in a format designed to facilitate the ease of comparison between the gross and net performance. In addition, the advertisements must contain sufficient disclosure to ensure that the performance figures are not misleading by stating, for example, that the gross of fees figures do not reflect the payment of investment advisory fees and other expenses.³⁴

Another limited exception to the net of fees requirement has been provided by the SEC for use in one-on-one presentations.³⁵ The adviser may, during private and confidential discussions with such clients, present performance data gross of fees if the adviser discloses in writing at the time of the presentation:

- that performance disclosures do not reflect the deduction of advisory fees;
- that the client's return will be reduced by the advisory fees and any other expenses it may incur;
- that the adviser's fees are described in Part II of its Form ADV; and
- a representative example (eg, table, chart, graph, or narrative) that shows the effect of advisory fees, compounded over a period of years, on the total value of a client's portfolio.³⁶

Hypothetical back-tested performance

The regulatory environment surrounding back-tested performance results has developed through SEC enforcement actions addressing such practices, rather than through the series of No-Action Letters discussed above. Unlike model performance, back-tested performance presents hypothetical performance developed through the retroactive application of an adviser's investment strategy to historical financial information in order to show the effect of investment decisions that the adviser theoretically would have made if the strategy had been in place at the time. By its nature, back-tested performance does not involve market risk and is viewed as highly suspect by the SEC. Accordingly, great care should be taken when presenting such data and generally should only be used with sophisticated clients.

Consequently, the following information must be disclosed, as applicable, when

presenting hypothetical back-tested performance:

- Whether the trading strategies used to reach the results presented were not available during the periods to which they were retroactively applied.³⁷
- All material economic and market factors that may have impacted the adviser's decision-making when using the model to actually manage client funds.³⁸
- That the advertised performance results do not represent the results of actual trading but were achieved through the retroactive application of a model developed with the benefit of hindsight.³⁹
- The inherent limitations of data derived from the retroactive application of a model developed with the benefit of hindsight and the reasons why actual results may differ.⁴⁰
- That actual performance of client accounts was materially less than the advertised hypothetical results for the same period.⁴¹

Whenever presenting back-tested performance, the guidance set forth in Clover Capital should also be considered, including the disclosure of:

- whether the advertised performance reflects the deduction of advisory fees, brokerage or other commissions, and any other expenses that a client would have paid;
- all material facts relevant to any comparison between back-tested performance and its benchmark; and
- the potential for loss.⁴²

RECORDKEEPING REQUIREMENTS

Investment advisers are required to keep copies of each notice, circular, advertise-

ment, newspaper article, investment letter, bulletin, or other communication sent to 10 or more persons.⁴³ In addition, advisers must maintain all records necessary to support any performance calculations made in such advertisements or other communications.⁴⁴ While advisers may satisfy their obligations to maintain sufficient documentation to demonstrate performance calculations by relying on internally prepared records, the SEC recommends that advisers also maintain records prepared by third parties that confirm the accuracy of the performance-related records, such as custodial and brokerage statements or reports prepared by an independent auditor.⁴⁵

REGULATORY EXAMINATION CONSIDERATIONS

The SEC devotes significant attention to an adviser's advertising practices during an examination, with particular focus on performance claims contained in advertisements. As a general matter, a typical SEC examination may require advisers to produce various books and records pertaining to advertising for review by the staff. Some of the records that may be requested include:

- copies of any promotional brochures, pamphlets, or other materials routinely furnished to prospective clients;
- copies of any advertisements (eg, newspaper or magazine ads, radio scripts, etc) used to inform or solicit clients during the past two years;
- copies of performance figures or charts used in general advertising or in one-on-one presentations;
- access to records and work papers supporting the performance calculations;
- information as to the inclusion criteria the adviser employs in the construction of any composite performance;

- copies of any newspaper or magazine article reprints disseminated to clients or prospective clients during the past two years;
- copies of any newsletters sent to clients during the past two years;
- a list of all third-party consultants for whom the registrant completed questionnaires or otherwise corresponded with during the period, including a copy of the most recent questionnaire completed for a third-party consultant.

Importantly, the SEC, in addition to reviewing the above documentation, will review each advertisement or other communication to ensure that adequate disclosures are made, using among other things the *Clover Capital* No-Action Letter as a checklist. This underscores the continued importance of that letter as it pertains to performance advertising and it can be expected that the staff will similarly rely on *Franklin Management* and the more recent *TCW Group* No-Action Letters to ensure adequate presentation and disclosure of an adviser's past specific recommendations.

CONCLUSION

Investment adviser advertising deficiencies continue to be among the most common deficiencies noted by the SEC during regulatory examinations. Thus, it is important that firms become familiar with the requirements and prohibitions relating to the form and content of investment adviser advertisements and take steps to ensure the proper maintenance of the required books and records. Understanding the potential of an effective advertising strategy as well as the regulatory limitations imposed by the regulators can be a daunting task, but is critical to an adviser's success and an important aspect of compliance with the

anti-fraud provisions and the fiduciary obligations of investment advisers.

References

- (1) See Conway Asset Mgmt, SEC No-Action Letter, (27th January, 1989).
- (2) DIV. OF INV. MGMT., U.S. SEC. & EXCH. COMM'N, GENERAL INFORMATION ON THE REGULATION OF INVESTMENT ADVISERS, available at <http://www.sec.gov/divisions/investment/iaregulation/memoia.htm> (last visited 24th April, 2010).
- (3) Investment Advisers Act of 1940 § 206(4), 15 U.S.C. § 80b-6(4) (2008).
- (4) Securities Act of 1933 § 17(a), 15 U.S.C. § 77q(a) (2008).
- (5) Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (2008); SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 (2010).
- (6) Advisers Act § 206(4).
- (7) *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963).
- (8) Advertisements by Investment Advisers, Advisers Act Release No. 121 (1st November, 1961) (hereinafter Adopting Release).
- (9) SEC Rule 206(4)-1(b), 17 C.F.R. § 275.206(4)-1(b) (2010).
- (10) See, eg, Munder Capital Management, SEC No-Action Letter (17th May, 1996); Denver Investment Advisors, Inc., SEC No-Action Letter (30th July, 1993).
- (11) Investment Counsel Association of America, Inc., SEC No-Action Letter (1st March, 2004).
- (12) SEC Rule 206(4)-1(a)(1-4), 17 C.F.R. § 275.206(4)-1(a)(1-4) (2010).
- (13) SEC Rule 206(4)-1(a)(5), 17 C.F.R. § 275.206(4)-1(a)(5) (2010).
- (14) Adopting Release, *supra* ref. 8.
- (15) DALBAR, Inc., SEC No-Action Letter (24th March, 1998).
- (16) See Kurtz Capital Management, SEC No-Action Letter (18th January, 1988).
- (17) Stalker Advisory Services, SEC No-Action Letter (18th January, 1994);
- (18) DALBAR, Inc., SEC No-Action Letter (24th March, 1998).

- (19) Investment Adviser Association, SEC No-Action Letter (2nd December, 2005).
- (20) DALBAR, Inc., SEC No-Action Letter (24th March, 1998).
- (21) Cambiar Investors, Inc., SEC No-Action Letter (28th August, 1997).
- (22) Denver Investment Advisors, Inc., SEC No-Action Letter (30th July, 1993).
- (23) SEC Rule 206(4)-1(a)(2). Where the advertisement does not include the list of all recommendations made within the immediately preceding one-year period, but offers to furnish such a list, the list must be provided free of charge. Scientific Market Analysis, SEC No-Action Letter (24th March, 1976) (noting that 'an adviser might be able to avoid the rule's requirements by charging a fee for which prospective clients might be unwilling to pay'). Moreover, the SEC interprets the Rule strictly to prohibit advisers from referring to select past profitable recommendations, even if accompanied by an offer to provide a list of all recommendations made during the preceding year. Dow Theory Forecasts, Inc., SEC No-Action Letter (7th November, 1985).
- (24) Adopting Release, *supra* ref. 8.
- (25) Franklin Management, Inc., SEC No-Action Letter (10th December, 1998).
- (26) The TCW Group, Inc., SEC No-Action Letter (7th November, 2008).
- (27) *Ibid.*
- (28) *Ibid.*
- (29) Clover Capital Management, Inc., SEC No-Action Letter (28th October, 1986).
- (30) *Ibid.*
- (31) *Ibid.*
- (32) *Ibid.*
- (33) Investment Company Institute, SEC No-Action Letter (24th August, 1987).
- (34) Association for Investment Management and Research, SEC No-Action Letter (18th December, 1996).
- (35) 'One-on-one' presentations generally are designed for one use, one time. Typically, this does not include 'flip books' that are mass produced; rather, these presentations are customised based on a client's or prospective client's individual needs and/or actual returns. A best practice is to always provide net of fee returns to retail clientele so that they have a clear understanding of the impact of fees on their performance.
- (36) Investment Company Institute, SEC No-Action Letter (23rd September, 1988).
- (37) *In re Leeb Investment Advisors et al.*, Advisers Act Release No. 1545 (16th January, 1996).
- (38) *In re Patricia Owen-Michel*, Advisers Act Release No. 1584 (27th September, 1996).
- (39) *In re LBS Capital Management, Inc.*, Advisers Act Release No. 1644 (18th July, 1997) (sanctioning an adviser for failing to disclose 'with sufficient prominence or detail' that the results portrayed did not represent actual trading).
- (40) *In re Schield Management Company et al.*, Advisers Act Release No. 1872 (31st May, 2000).
- (41) *In re Market Timing Systems, Inc. et al.*, Advisers Act Release No. 2047 (28th August, 2002).
- (42) *In re Patricia Owen-Michel*, Advisers Act Release No. 1584 (27th September, 1996).
- (43) SEC Rule 204-2(a)(11), 17 C.F.R. § 275.204-2(a)(11) (2010).
- (44) SEC Rule 204-2(a)(16), 17 C.F.R. § 275.204-2(a)(16) (2010).
- (45) Jennison Associates LLC, SEC No-Action Letter (6th July, 2000).