



## SEC Rules and No-Action Letters Pertaining to Performance Advertising and Marketing

### Rules and Regulations:

- Section 206 of the Advisers Act - the “Anti-fraud Provision”
- Rule 206(4)-1 of the Advisers Act - the “Advertising Rule”
- Rule 204-2(a)(16) of the Advisers Act - the “Books and Records Rule”

### No Action Letters:

1. Bramwell Growth Fund SEC No-Action letter dated 09/07/86
2. Clover Capital Management, Inc. #1 SEC No-Action Letter dated 10/28/86
3. Clover Capital Management, Inc. #2 SEC No-Action Letter dated 07/24/87
4. Investment Company Institute, SEC No-Action Letter dated 07/24/87 (custodial feeds did not have to be deducted from performance data; brokerage and advisory fees need to be deducted from performance data).
5. Clover Capital Management, Inc. #3 SEC No-Action Letter dated 09/23/88
6. Investment Company Institute, SEC No-Action Letter dated 09/23/88
7. Investment Company Institute SEC No-Action Letter dated 09/23/88 (gross performance numbers one-on-one presentations to prospective clients)
8. Clover Capital Management, Inc. #4 SEC No-Action Letter dated 11/27/89
9. J.P. Morgan Investment Management, Inc. SEC No Action Letter dated 05/07/96 (use of model fee)
10. Securities Industry Association, SEC No-Action Letter dated 11/27/89
11. Horizon Asset Management, LLC, SEC No-Action Letter dated 09/13/96 (portability of performance data)
12. Great Lakes Advisors, Inc. denial from SEC of No-Action dated 04/03/92
13. MassMutual Institutional Funds, SEC No-Action Letter dated 09/28/95
14. AIMR, SEC No-Action Letter dated 12/18/96
15. GE Funds, SEC No-Action Letter dated 02/07/97
16. Jennison Associates, LLC, SEC No-Action Letter dated 07/06/00. In this letter, Jennison lost records to substantiate its performance claims due to a series of fires. The SEC articulated in its reply the following:

- The importance of accurate performance reporting;
- Rule 204(a)(16), which creates a non-exclusive safe harbor if certain account statements and work sheets are maintained;
- The ability for advisers to help facilitate the SEC’s examination of performance advertising by maintaining custodian and/or brokerage statements as well as other internally generated documents supporting the accuracy of performance calculations used in client account statements and marketing materials; and,
- Advisers can further facilitate the Staff’s examination of their performance if they maintain reports prepared by an independent auditor who verifies their performance.