

660:11-13-4. Content [AMENDED]

(a) **Application of antifraud provisions.** Sales Literature used in any manner in connection with the offer and sale of securities or the offer of brokerage or advisory services is subject to the provisions of Section 1-501 and/or 1-502 of the Securities Act, whether or not such Sales Literature is required to be filed pursuant to Section 1-504 of the Securities Act or 660:11-13-3. Further, Sales Literature filed with the Department is subject to the provisions of Sections 1-501 and/or 1-502 and 1-505 of the Securities Act. Sales Literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor.

(b) **Prohibited disclosures.**

(1) Unless stating that the Commission, Administrator or Department has not approved the merits of the securities offering or the Sales Literature, no Sales Literature shall contain a reference to the Commission or the Department unless such reference is specifically required in a Departmental Prospectus Guide or requested by the Administrator.

(2) An investment adviser is prohibited from publishing, circulating or distributing any Sales Literature that:

(A) refers, directly or indirectly, to any testimonial concerning the investment adviser or any advice, analysis, report, or other service rendered by such investment adviser;

(B) refers to past specific recommendations of the investment adviser that were or would have been profitable unless the investment adviser provides:

(i) all past recommendations made during the immediately preceding period of not less than one year,

(ii) additional information sufficient for a reader to evaluate the adviser's performance to include, but not be limited to, 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

(iii) a disclaimer to the effect that past performance does not guarantee future success;

(C) represents that any graph, chart, formula or other device offered can in and of itself be used to make trading decisions without prominently disclosing in the advertisement any limitations or difficulties in its use; or

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