Investment Adviser Performance Marketing and Advertising – What You Need to Know

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As an investment adviser's practice matures, it is inevitable that new products and services may be offered. More often than not, for money managers, this may present challenges as they hire a new portfolio manager who wishes to bring over his/her performance track record. Questions relating to portability, books and records, model performance and composite construction often follow. Consequently, it is important to start by understanding the fundamentals and tools that will help to address each of these often complex questions.

Rules that Govern Performance Marketing and Advertising

Performance advertising by investment advisers is regulated through various provisions of the Investment Advisers Act of 1940 (the "Advisers Act"), and specifically Section 206 and the rules promulgated thereunder. Section 206 provides for the general anti-fraud provision of the Advisers Act, which applies to all investment advisers, whether registered or not. Effective January 1, 1962, the Securities and Exchange Commission ("SEC") adopted Rule 206(4)-1, commonly referred to as the "Advertising Rule," to define certain advertisements by investment advisers as fraudulent, deceptive or manipulative, which provides the basic legal framework for investment advisory advertising standards. However, the brevity of the Advertising Rule should not be viewed casually, for most advertising governance is regulated through no-action letters,[1] enforcement actions and deficiency letters provided to advisers through the SEC's examination process.

Performance advertisements continue to be a top area of focus for the SEC. Consequently, it is imperative for investment advisers to know the regulatory requirements by adopting strong internal policies, procedures and controls.

To get started, review the Advertising Rule and become knowledgeable about those no-action letters that may apply to your firm. The following is a consolidated list of certain no-action letters that are "must reads" to help understand the considerations which govern performance advertising practices. Some of the most followed no-action letters by legal and compliance professionals include:

1. Bramwell Growth Fund SEC No-Action letter dated 08/07/96
   a. Presenting performance information of another open-end mutual fund for which a company's portfolio manager previously managed
2. Clover Capital Management, Inc. #1 SEC No-Action Letter dated 10/28/86
   a. Use of model portfolios and fees in advertisements
3. Clover Capital Management, Inc. #2 SEC No-Action Letter dated 07/24/87
   a. Based on Clover Capital Management, Inc #1, provides clarity on presenting performance figures on a "gross of fee basis"
4. Investment Company Institute, SEC No-Action Letter dated 07/24/87
   a. Custodial fees do not have to be deducted from performance data; brokerage and advisory fees need to be deducted from performance data
5. Clover Capital Management #3 SEC No-Action Letter dated 09/23/88
   a. Guidance on presenting prospective clients, in a one-on-one presentation, with performance results on a gross of fee basis
6. Investment Company Institute SEC No-Action Letter dated 09/23/88
   a. Gross of fee performance numbers permissible for one-on-one presentations to prospective clients
7. Clover Capital Management, Inc. #4 SEC No-Action Letter dated 11/27/89
   a. Advertising historical performance through the use of model fees, rather than actual fees charged during the time period
8. Securities Industry Association, SEC No-Action Letter dated 11/27/89
   a. Advertising historical performance through the use of model fees, rather than actual fees charged during the time period
9. Great Lakes Advisors, Inc. denial from SEC of No-Action dated 04/03/92
   a. Using performance data from predecessor firm
10. Stalker Advisory Services, SEC No-Action Letter dated 01/18/94
    a. Guidance on whether certain reprints from certain independent financial publications regarding ratings and performance of investment advisers constitute a testimonial
11. MassMutual Institutional Funds, SEC No-Action Letter dated 09/28/95
    a. Calculation of standardized average annual total returns using a certain methodology, and dissemination of such total returns in advertisements
12. J.P. Morgan Investment Management, Inc. SEC No-Action Letter dated 05/07/96
    a. Advertising use of a particular investment strategy by calculating the performance of accounts that employ that strategy and deducting the highest advisory fee charged to any account employing that strategy
13. Horizon Asset Management, LLC, SEC No-Action Letter dated 09/13/96
    a. Portability of performance data by an investment adviser previously owned by one of the firm's existing managers
14. AIMR, SEC No-Action Letter dated 12/18/96
    a. Use of gross and net performance in advertisements
15. GE Funds, SEC No-Action Letter dated 02/07/97
    a. How to include performance information regarding the performance of institutional accounts for a mutual fund that are managed by the same firm and that have institutional account investment objectives substantially similar to those of a corresponding mutual fund
16. Franklin Management, Inc., SEC No-Action Letter dated 12/10/98
    a. The quintessential no-action letter on past-specific performance regarding quarterly

reports identifying certain, but not all, securities bought, sold or held by an adviser for its advisory accounts

17. Jennison Associates, LLC, SEC No-Action Letter dated 07/06/00
    a. How to substantiate performance when records are destroyed – which in this case was due to a series of fires. In its response, the SEC articulated several safeguards and practicalities, including:
        - 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,
        - Reports prepared by an independent auditor who verifies their performance will help in facilitating the SEC's examination of the IA's performance.
18. Investment Adviser Association, SEC No-Action Letter dated 12/02/05
    a. Advertising third-party ratings that rely in part on client evaluations
19. The TCW Group, Inc., SEC No-Action Letter dated 11/07/08
    a. How to satisfy the past specific recommendation rule requirements by advertising no fewer than five holdings that contributed positively and five that contributed negatively to a representative account's performance
20. Conway Asset Management, SEC No-Action Letter dated 01/27/1989
    a. Advertising prior performance results of an unaffiliated investment adviser

While there are many notable enforcement actions to reference, the following five enforcement actions are of particular note.

1. In the Matter of Seaboard Investment Advisers, Inc. (Rel. No. 1431; 08/03/1994)
    a. Seaboard, which had over 950 client accounts and managed over $1.1 billion in assets as of March 31, 1993, made untrue statements of a material fact by, among other things, advertising purported performance figures at previous employers without disclosing the source of the figures or possessing supporting documentation for the figures; using hypothetical data for component weightings; and failing to disclose that the performance was based on a select group of accounts.

Performance advertisements continue to be a top area of focus for the SEC.

2. In the Matter of William J. Ferry (Rel. No. 1747; 08/19/1998)
    a. Ferry prepared and published back-tested performance data on the adviser's website, which showed that an investment following respective timing systems would have significantly outperformed major market indices, but was misleading due to lack of disclosures.
3. In the Matter of Capital Works Investment Partners, LLC and Mark J. Correnti (Rel. No. 2520; 06/06/2006)
    a. In June 2002, the SEC cited various deficiencies in its examination of the adviser, which required the firm to take corrective actions. Nevertheless, in subsequent requests for proposals (RFPs) from potential clients and questionnaires from existing clientele, the firm falsely stated that the examination did not result in any deficiencies or require corrective actions.
4. In the Matter of Merrill Lynch, Pierce, Fenner & Smith Inc. (Rel. No. 2834; 01/30/2009)
    a. Between 2002-2005, Merrill Lynch, through its pension consulting services advisory program, breached its fiduciary duty to certain clientele and prospects by,

among other things, failing to disclose facts creating a material conflict of interest in Merrill Lynch's recommendation to use directed brokerage to pay hard dollar fees and by suggesting the use of Merrill Lynch's transition management desk.

5. SEC v. Locke Capital Management, Inc. and Leila C. Jenkins (U.S. District Court District of Rhode Island; 03/09/2009)
   a. Adviser based in New York and Rhode Island mislead investors and the SEC by inventing several large advisory clients, supposedly based in Switzerland, in order to inflate the firm's assets under management.

After reviewing these no-action letters and enforcement actions, a firm should then refer to its own past regulatory examination letters, and specifically see what, if anything, was noted as a deficiency concerning the firm's advertising and marketing practices. If a deficiency was noted, the firm should take steps to ensure that whatever corrective actions that were represented to the Commission are still in place today. This will help avoid recidivist deficiencies.

Next, the firm should consider the variety of ways that its current advertising materials could be misleading. Rule 206(4)-1(a)(5) prohibits advertisements from being fraudulent, deceptive or misleading. This is general in nature and does not provide for how performance data should be calculated or what disclosures must be provided. This is why advisory firms should turn to no-action letters for guidance. The information provided from these sources can be effectively used for calculating performance in a meaningful manner and help to formulate adequate disclosures of all material facts necessary to assess the advisory marketing piece.

Importantly, each performance advertisement must take into consideration the facts and circumstances surrounding its use. This includes:

- The knowledge and sophistication of the recipient;
- Whether the presentation is for one-on-one use or multiple use (*i.e.,* more than one use, one time, for advertising purposes);
- The recipient's knowledge of and relationship with the adviser;
- Whether safeguards are in place regarding dissemination or use by the recipient; and
- Whether performance information is reflected within the piece.

Let's take the following example to illustrate these points.

Table 1.

Dr. Harry R. Pit specializes in the technology sector. His passion began in 1998 when the technology sector boomed and performance returns were unprecedented. Since that phenomenon, over the past fourteen (14) years Dr. Pit has developed and refined a portfolio analytics system for technology stock selection. Approximately five (5) years ago, Dr. Pit received client funds to "seed" this first live portfolio at his advisory firm, Alpha, Inc. Two years after that, Dr. Pit joined Exquisite Advisors, an institutional investment adviser, as their Chief Investment Officer. Dr. Pit wishes to use his performance track record with the firm's existing and prospective clients, and he approaches compliance for guidance. Where do you begin?

Based on the review of the no-action letters, there are a number of considerations. First, it appears that Dr. Pit may have three performance track records to consider:

- 1998 to present: represents model portfolio performance derived from the analytics system
- 2007 to present: represents actual client performance achieved at Alpha, Inc. prior to Dr. Pit's affiliation with Exquisite Advisors
- 2009 to present: Performance achieved by Dr. Pit while employed by Exquisite Advisors.

To begin the process, Compliance should take into account regulatory and no-action letter guidance, including *Horizon* (relating to portability), *Clover* (relating to use of model performance and fees) and Rules 206(4)-1 (advertisements by investment advisers) and 204-2 (relating to books and records requirements). It is imperative to inquire whether Dr. Pit was solely responsible for the entire performance track record. In order for the performance track record to be portable, Dr. Pit must confirm that he was solely responsible for the performance track record in the first two periods and was not relying on a trader, research analyst or other professional to execute his portfolio management decisions for the technology strategy Assuming the track record solely is his, Compliance should next check whether Dr. Pit has all requisite books and records to support the performance calculations throughout all three periods. This is often the most difficult threshold to meet given the potential voluminous nature of this request. Such back-up documentation may be kept either in electronic or hard copy format.

It also appears that Dr. Pit wishes to present this information to both existing and prospective clients. Given the institutional practice of the firm, and the modes through which Dr. Pit may desire to disseminate his performance track record (through RFPs, the firm's website, through pitch books and/or social media channels), it is important to consider *how* the performance information will be presented.

One of the most pivotal no-action letters to begin with is *Clover Capital Management, Inc.* ("Clover"). In *Clover*, 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 (*e.g.*, that the volatility of an index materially differs from a model portfolio); and
- failing to disclose any material conditions, objectives, or strategies used to obtain the results portrayed.[2]

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.[3]

Presenting performance based on trading in a model portfolio historically has been viewed with skepticism 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 (*e.g.*, the model reflects securities that are no longer recommended for clients); and
- as applicable, that the adviser's clients had actual investment results materially different from the results portrayed in the model.[4]

Notably, in a letter issued after *Clover*, the *Investment Company Institute* ("ICI") received no-action relief for the use of performance that is "gross of fees" in one-on-one presentations. One-on-one presentations are generally provided to wealthy individuals and large institutions that have significant assets and are given an opportunity to ask questions relating to fees. Consequently, fees need not be deducted provided that certain written disclosures accompany the performance information. This includes:

- that performance figures do not reflect the deduction of advisory fees;
- that the client's return will be reduced by the advisory fees and other expenses that it may incur in the management of the account;
- that the investment advisory fees are described in the adviser's Form ADV Part 2A; and
- a representative example showing the effect that the advisory fee, compounded over a period of years, would have on the value of the account.

Where Dr. Pit's performance will not be shown in one-on-one presentations, the adviser should consider the *Security Industry Association* ("SIA") and *J.P. Morgan Investment Management, Inc.* ("JPIM") no-action letters, which require that either actual advisory fees or the highest fee charged to any client in the composite during the period be deducted when calculating model performance net-of-fee information.

Consequently, how Dr. Pit's performance information is presented is of paramount importance. Over the past several years, the SEC has sanctioned investment advisers who advertised misleading model performance results. In particular, the SEC cited violations of Rules 206(4) and 206(4)-1 by failing to include disclosure in the advertisement about the lack of actual trading, the fact that the performance advertised was developed by retroactive application of a model, the deduction of various fees that would have been incurred, the potential for losses and material economic and market factors that would have had an impact on actually managing client accounts.[5] Moreover, the SEC is considering the nature and sophistication of the intended recipients (*e.g.,* retail versus institutional clients) in determining whether model performance results are misleading.[6]

Therefore, when drafting composite disclosures for Dr. Pit's returns, care must be given to consider not only the guidelines provided for by *Clover* and *ICI*, but also those basic practices that have been recently provided within the advisory industry.[7]

To that extent, it is important for advisory firms to ensure that various limitations to the model are disclosed. For example, compliance should definitively address whether the model returns differ materially from actual client returns. If so, pursuant to *Clover*, the adviser must disclose that actual, live investment results materially differ from the results portrayed in the model.

In addition, in order to write pertinent disclosures, additional information may be required, particularly as it relates to Dr. Pit's management of the model portfolio. For example, do the model results portrayed reflect the reinvestment of dividends and other earnings? Do the benchmark's (*i.e.,* index) results materially differ from the model? Have the investment strategies of the model materially changed during the time period in comparison to current live, actual performance? Depending upon these answers, comprehensive disclosures may be required.

Risk Management Tip: To help potential investors, financial planners and consultants understand the importance of and distinctions between model and actual performance, the adviser may wish to create a descriptive supplemental piece which defines and thoroughly describes the inherent limitations of Dr. Pit's model performance. Such information should be written in plain English and provide illustrations, graphs and tables to help the recipient better comprehend and understand the disclosures provided.

How to Construct a Composite

To link – or not to link – that is the question. When commencing a performance track record, some advisers opt to use a representative account, which most closely reflects the style of management in accordance with investment guidelines and restrictions that have been established by the adviser. Other advisory firms opt to formulate a composite. Generally speaking, most institutional composites consist of all fee and non-fee paying, discretionary accounts that are similarly managed. Most advisers have a defined set of composite criteria used to determine whether an account is included in or excluded from a composite. For example, such criteria could include specific target allocation ranges for equity, fixed income and cash, market value minimums and taxable versus non-taxable accounts. These composite construction rules allow for minor market value fluctuations for short periods of time, which may temporarily move an account out of a target allocation range within a composite.

Other factors, such as timing of inclusion or exclusion of accounts in composites, treatment of closed accounts, total return calculations for individual accounts, and at the composite level, frequency of composite return calculations and composite dispersion calculations, typically are addressed in an internal operations document, which should be provided to and reviewed by compliance.

In the above example, it is unclear whether Dr. Pit is using composite returns for his current technology portfolio marketing efforts. Assuming that he is, it is required that the advisory firm have required back-up for supporting composite construction and its related performance data.

However, what if Dr. Pit wishes to link his performance to his previous firm, Alpha, Inc. and include his model performance? What considerations must be taken into account for linking actual performance to a previous model account? Can he do this?

The answer depends on the presentation of the information and type of back-up he has maintained over time. In accordance with Rule 204-2(a)(16), an adviser must keep all records necessary to substantiate the calculation of performance. This may include custodial account statements showing account activity, and worksheets and internal documents that collectively demonstrate the calculation of performance returns. It is common for the SEC to request back-up for early performance presentation periods to ensure that the firm has maintained requisite records.

One solution is for Dr. Pit to show actual, live client returns, and link the Exquisite Advisors Technology Composite client returns to the Alpha, Inc. Technology Composite client returns, so long as all material differentials are disclosed. This would then formulate a 5-Year Technology Composite.

If Dr. Pit wished to link the Technology Composite to the model returns, he may wish to take into consideration those requirements under the Global Investment Performance Standards ("GIPS®"), as applicable. Specifically, when constructing a composite, the adviser is not permitted to link performance of simulated or model portfolios with actual performance.[8] Consequently, a possible solution for Dr. Pit is to use two performance charts and delineate between the GIPS® compliant presentation as well as the model performance supplemental information (which should be labeled as such for clarifying purposes).

On the other hand, Dr. Pit *could* link the Technology Composite performance to the model, but, to do so, the Firm would not be able to claim compliance with GIPS for that period (*i.e.,* prior to 2007). In most cases, this is not a desirous result.

Based on GIPS requirements and guidance from *Clover Capital Management, Inc.*,[9] ("Clover"), model and actual composite returns should be presented separately, with model returns shown as supplemental information, in the following format:

Table 2.

Annualized Returns – Performance of the Technology Portfolio

	2007	2008	2009	2010	2011	1Q2012	YTD	ITD
Technology Portfolio (gross)								
Technology Portfolio (net)								
Benchmark								

As of 03/31/2012; Source: Exquisite Advisors; see additional disclosures

Performance Information

The Technology Portfolio is managed by Harry R. Pit, Ph.D., CFA ("Dr. Pit"). The above performance data represents the average of those Technology fully discretionary accounts under management at Exquisite Advisors for at least one calendar quarter from 01/01/2009 to present. From 01/2007 through 12/2008, the performance returns reflect the returns of Dr. Pit as the sole manager of the Technology Portfolio, managed on a fully discretionary basis while at Alpha, Inc., a registered investment adviser founded by Dr. Pit, which enables the prior firm performance to be carried forward to Exquisite Advisors.

Gross and net returns were calculated on a total return basis, including all dividends and interest, accrued income, realized and unrealized gains or losses, and do not reflect a deduction of advisory fees, commissions charged on securities transactions, or fees for related services. Net of fee calculations also reflect the maximum fee which could be deducted from an advisory account. Investors should be aware that the net compounded effect of the deduction of fees over time will be affected by the amount of the fee, the time period and investment performance.

Exquisite Advisors' advisory fees are fully detailed in Part 2A of its Form ADV. Since fees are deducted quarterly, the compounding effect will increase the impact of such fees by an amount related to the account's performance. For example, accounts with a 3% annualized fee that is deducted quarterly and a 10% gross annual return, will have a net annual return of 6.7%. **Gross performance information may only be presented to Financial Professionals with all applicable disclosures. Individual account performance will vary. Past performance is no guarantee of future performance.**

Risk Management Tip: Other disclosures relating to additional performance calculations, risks, definition of indices and conflicts of interest may be necessary depending upon the content of the marketing piece. When formulating the stand-alone supplemental information related to the model, be sure that you take into consideration the following:

- Label all model performance advertising as such; *e.g.,* **Model Technology Performance**
- Do *not* link model results with live, actual results, nor present model performance in the same chart
- Present model results only to sophisticated clients or other financial professionals, who will understand the limitations and risks associated with the model
- Always disclose that the results are model / hypothetical, and include all relevant disclosures and assumptions that are made in light of the guidance provided in *Clover*
- Do not refer to "past performance" of the model results, as this may infer that actual, live results are being illustrated
- Ensure that all disclosures are at least eight (8) point Times New Roman font size and clearly label all hypothetical data
- Consider whether any extraordinary market conditions could have impacted performance (*e.g.,* in 1998, there was extraordinary, unprecedented market performance in the technology sector and this should be noted within the disclosure if that time period is presented)
- Be sure that the firm has any and all books and records related to the model and actual results, and safeguard them for regulatory examination purposes

How to Develop Effective Disclosures and Your Advertising Compliance Program – A Practical Guide

In order to formulate adequate disclosures, one must start by understanding the requirements. These requirements, as articulated in the advertising regulations and no-action letters, should be captured in an internal policies and procedures document. This will become a priceless document, particularly when the sales and marketing team requires an imminent turn-around in a complicated area, such as using hypothetical or model performance, requesting the requirements for portability or seeking a multi-discipline composite construction.

Once you understand the types of disclosures that may be needed, formulate a disclosure library. The library may consist of:

- Performance disclosures for each composite or fund;
- Definitions for each benchmark used by the adviser;
- Risk disclosures related to the product presented;
- Non-performance disclosures (for representative client lists, sample sectors presented, portfolio characteristics, one-on-one presentations, etc.); and
- Ratings and ranking disclosures.

Once the disclosure library is formulated, meet with the sales and marketing department, and provide training on how they can use the disclosure library to pre-populate disclosures *prior* to submitting materials to compliance. In the training, explain what circumstances trigger disclosures, and then share why and how they should use disclosures to ensure that advisory clients and prospects are receiving all material information as required by the SEC. While this may seem like a daunting task, over time, it does prove to be highly effective.

If you do not already have one, develop an approval routing slip to help evidence that compliance has reviewed and approved all marketing and performance advertising materials prior to dissemination. This may be kept in electronic or hardcopy form and should be catalogued for prompt access.

Familiarize yourself with performance advertising examination focus areas. Typically, this includes: (1) methodology, consistency and accuracy of performance calculations; (2) maintenance of required back-up and advertising books and records; (3) adequacy of disclosures; and (4) internal controls surrounding performance advertising, which is a perceived risk by the Commission.

Work closely with portfolio managers, traders and the marketing department to ensure you have their input about perceived risks and relevancy of performance data. Particularly if a strategy has a long-term track record, it is important to understand the history of that portfolio so that you can formulate material disclosures about the performance presented. For new marketing pieces, consider having a portfolio manager sign-off on the information contained therein to help further ensure accuracy.

Detailed, organized records will go a long way during an examination to help evidence the strength of your internal controls. Remember to keep back-up documentation for all factual and statistical information, and not just for performance. Finally, develop solid relationships with your sales and marketing personnel by conducting training frequently on compliance requirements related to performance advertising, which is critical for risk management in this most important area.

ENDNOTES

1 A no-action letter generally requests assurance from the SEC staff that it would not recommend an enforcement action if a certain action or activity occurred.

2 *Id.*

3 *Id.*

4 *Id.*

5 For more information, *see* In re Engebretson Capital Mgmt., Inc. & Lester W. Engebretson, Investment Advisers Act Release No. 1825, 1999 WL 756123 (Sept. 13, 1999); Profitek, Inc., and Edward G. Smith, Investment Advisers Act Release No. 1764, 1998 WL 667627 (Sept. 29, 1998); In re Meridian Investment Mgmt. Corp., et al., Investment Advisers Act Release no. 1779, 1998 WL 898489 (Dec. 28, 1998); In re Patricia Owen-Michel, Investment Advisers Act Release No. 1584 (Sept. 27, 1996); In re LBS Capital Mgmt., Inc., Investment Advisers Act Release No. 1644 (July 18, 1997).

6 In re LBS Capital Mgmt., Inc., Investment Advisers Act Release No. 1644 (July 18, 1997).

7 *See* Spaulding & Stone, "Model, Hypothetical and Backtested Performance – Best Practices," Investment Performance Measurement Newsletter (Feb. 2009).

8 *See* CFA Institute, Global Investment Performance Standards 29-30 (3d. ed. 2010) at page 10.

9 *See* Clover Capital Management, SEC No-Action Letters, (Oct. 28, 1986, Jul. 24, 1987, Sep. 23, 1988 and Nov. 27, 1989).