

Sec. 36b-31-5a. Advertisements by investment advisers

(a) As used in this section “advertisement” includes, but is not limited to, 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, which offers (1) any analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; (2) any graph, chart, formula or other device to be used in making any determination as to who should buy or sell any security, or which security to buy or sell; or (3) any other investment advisory service with regard to securities.

(b) It shall constitute a fraudulent, deceptive or misleading act, practice or course of business for any investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:

(1) Which refers directly or indirectly to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by the investment adviser;

(2) Which refers, directly or indirectly to past specific recommendations of the investment adviser which were or would have been profitable to any person; provided, this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by the investment adviser within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately, (A) state 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 (B) contain the following cautionary legend on the first page in print or type as large as the largest print or type used in the body or text thereof: “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”;

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered may assist any person in making decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement such device’s limitations and the difficulties with respect to its use;

(4) Which contains any statement to the effect that any report, analysis, or other service may be furnished free or without charge, unless such report, analysis or other service actually is to be furnished entirely free and without any condition or obligation, directly or indirectly; or

(5) Which contains any untrue statement of a material fact or which is otherwise false or misleading.

(Effective August 22, 1994; Transferred July 3, 1995)