

ADVERTISING

COMPLIANCE WORKSHOP FALL 2015

Wes Brinkley

wbrinkley@maynardcooper.com

(205) 254-1845



Presentation Overview

▼ **What is Advertising?**

▼ **Performance Advertising**

▼ **Social Media**

▼ **Global Investment Performance Standards**

Regulatory Framework

▼ Rule 206(4)-1 the Advertising Rule

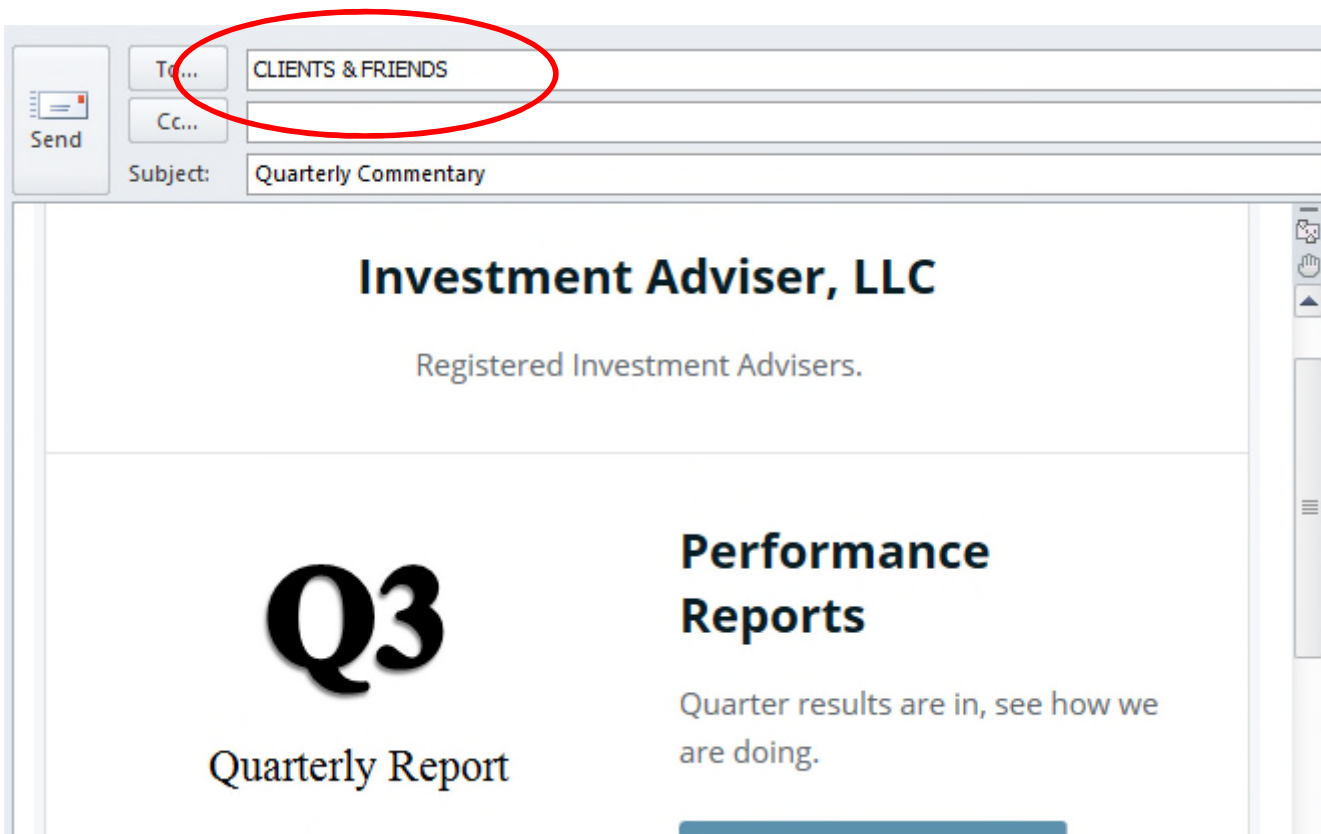
▼ Four specific prohibitions and a catchall prohibition:

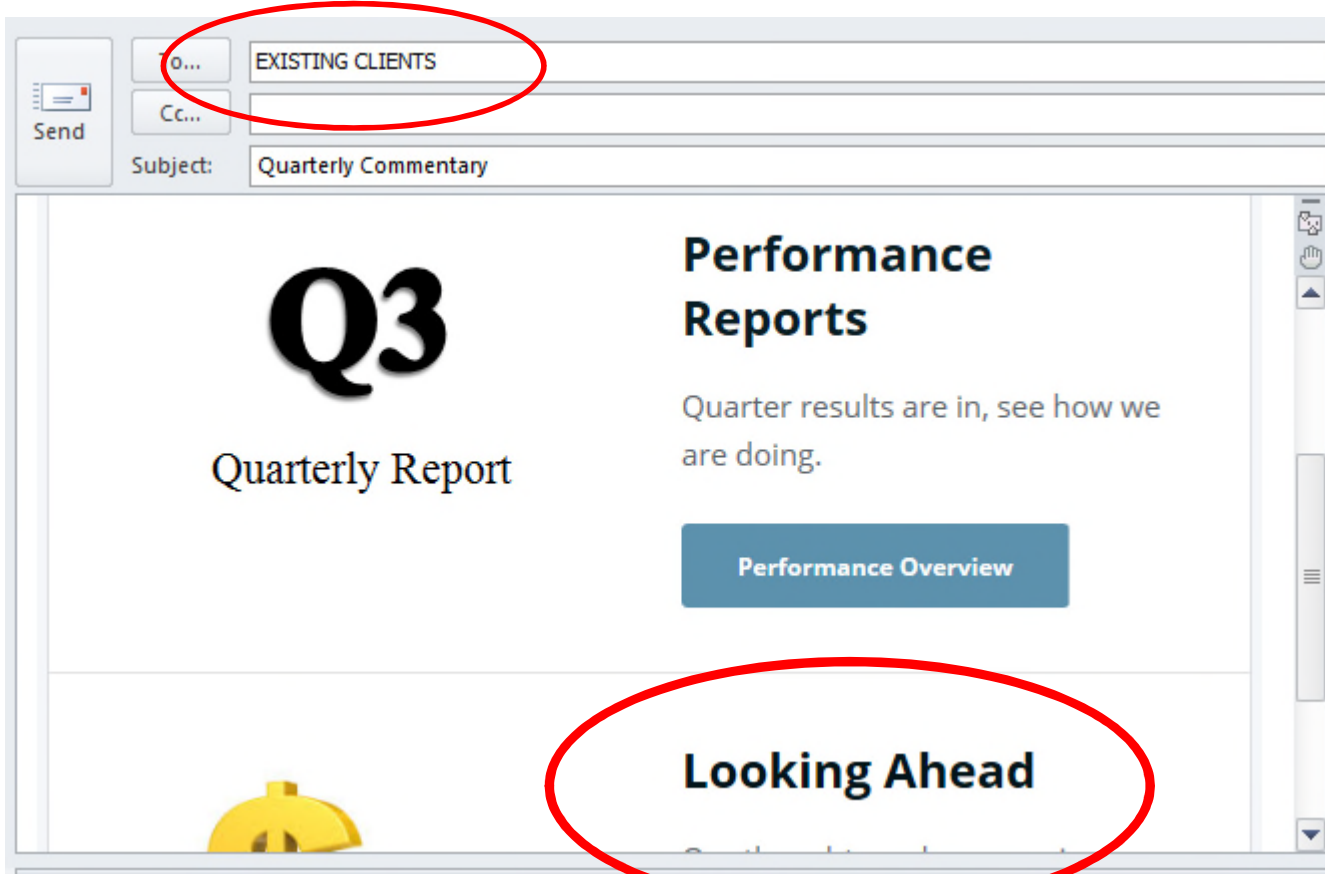
- ▼ Testimonials;
- ▼ Past specific recommendations;
- ▼ Predictive charts or formulas;
- ▼ Free must mean free; and
- ▼ Untrue statement of material fact or that is otherwise false or misleading.

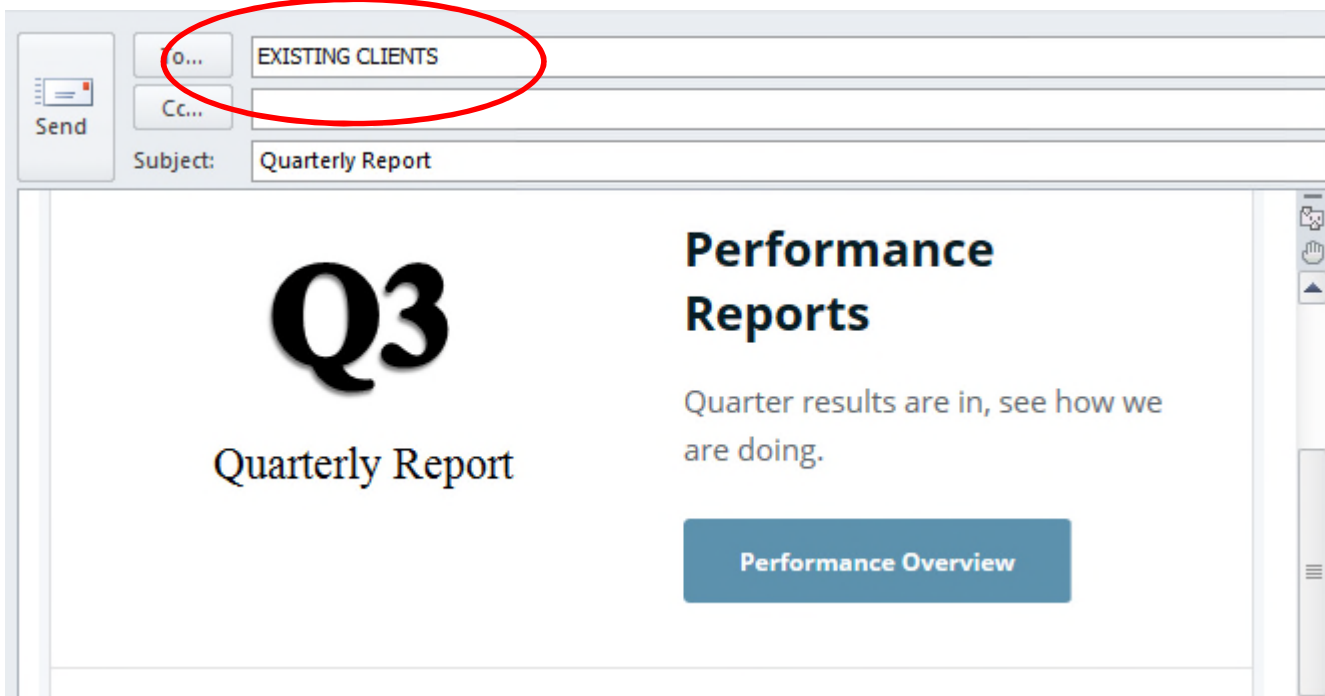
What is Advertising?

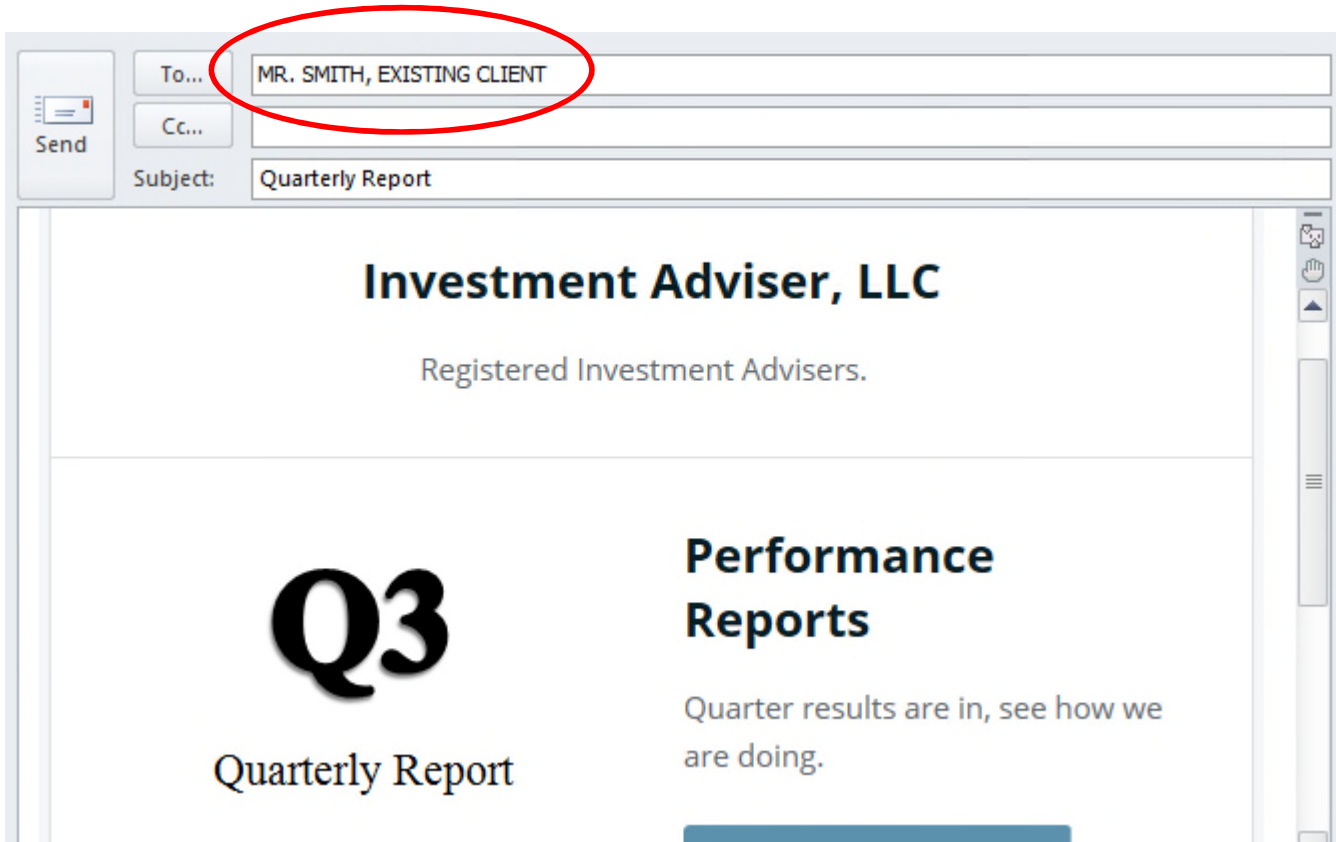
Marketing Brochures












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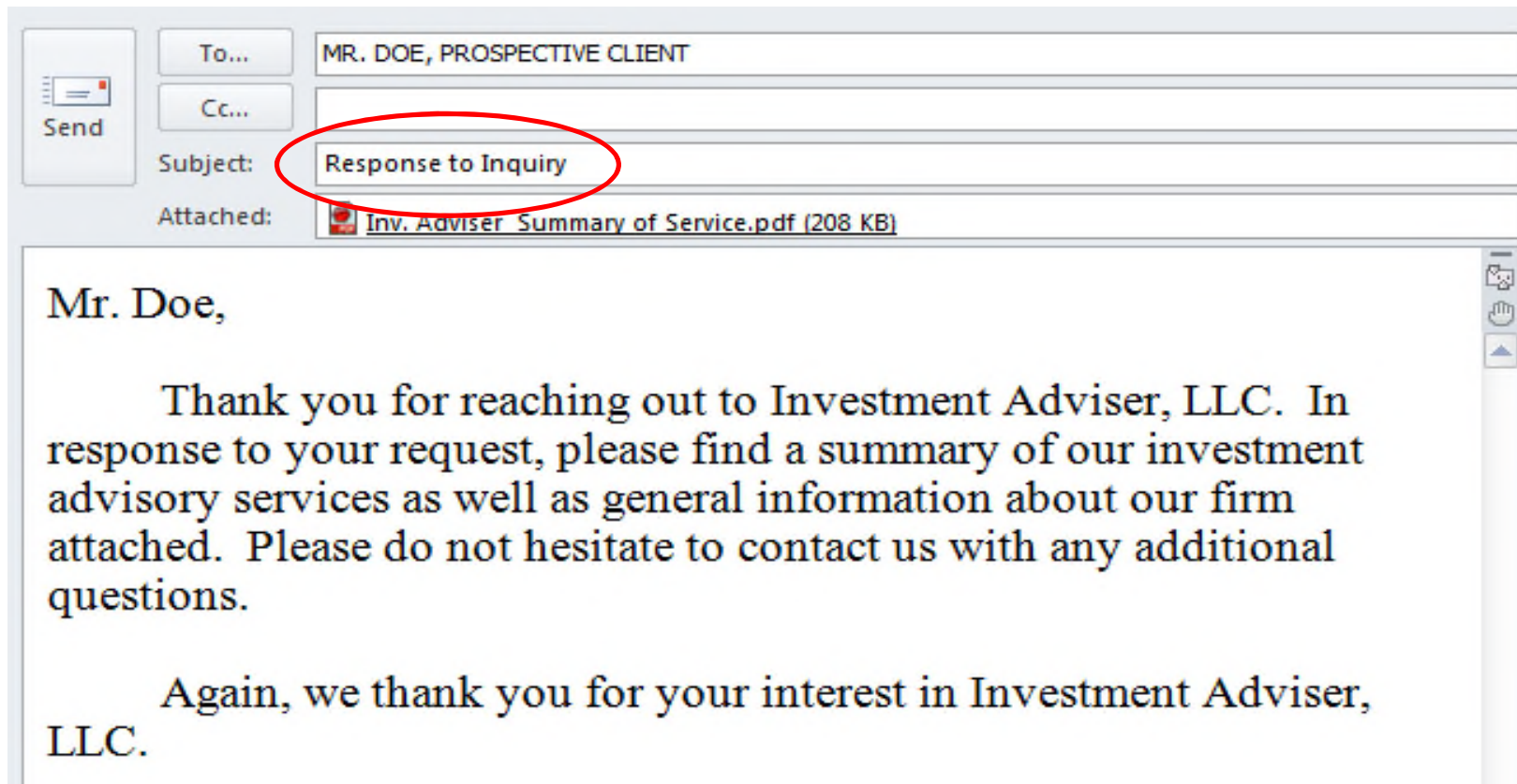


<https://www.youtube.com/>

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www.top50managers.com



Performance Advertising

- ▼ A 2014 exam priority
- ▼ Disclosures must be prominently displayed
- ▼ Potentially misleading use of model or actual performance results for failure to disclose:
 - ▼ Effect of material market or economic conditions on the results
 - ▼ Net of fees
 - ▼ Reinvestment of dividends, etc.
 - ▼ Possibility of loss
 - ▼ Use of index
 - ▼ Unicorns

Model Performance

- ▼ **Potentially misleading use of model performance results for failure to disclose:**
 - ▼ **Limitations inherent in model result**
 - ▼ **Changes in model**
 - ▼ **Changes in offered strategies**
 - ▼ **Materially different from client results**

Hypothetical Performance

- ▼ **Potentially misleading use of hypothetical performance results for failure to disclose:**
 - ▼ **Derived from the retroactive application of a model developed with the benefit of hindsight**
 - ▼ **The inherent limitations of data**
 - ▼ **Whether trading strategies retroactively applied were available during the periods presented**
 - ▼ **Whether actual performance with client accounts was materially different than the advertised hypothetical results for the same period**
 - ▼ **Economic and market factors**
 - ▼ **Net of fees requirement**
 - ▼ **All material facts relevant to any benchmark comparison**
 - ▼ **The potential for loss**

Hypothetical Performance

- ▼ Recent enforcement action brought by the SEC for misrepresenting hypothetical performance results:
 - ▼ An adviser presented performance results and specifically stated the results were not backtested, when in reality the algorithm used had not been in existence for the period of time being presented. In addition to misrepresenting the results, the hypothetical data contained a substantial performance calculation error.
 - ▼ When hypothetical performance is presented, the methodology used must be sound and sufficient records must be kept.

Net of Fees Requirement

- ▼ Performance results must be presented after the deduction of advisory fees, brokerage or other commission, and any expenses that a client paid or would have paid (excluding custodial fees).
- ▼ Gross-of-fee performance alone is considered misleading.
- ▼ Gross-of-fee performance with certain disclosures may be presented in:
 - ▼ One-on-one presentations;
 - ▼ Consultants in a one-on-one presentation; and
 - ▼ Side-by-side gross and net of fee performance.
- ▼ Model fees must be equal to the highest fee charged to any account employing the same strategy during the performance period.


**Fund A ended the quarter up approximately 0.10%
before fees.**

**Fund A ended the quarter up approximately 0.10%
before fees.¹**

1. Fund A was up approximately 0.08% after fees.

Fund A ended the quarter up approximately 0.10% before fees and approximately 0.08% after fees.¹

1. Net of all fees, expenses, and incentive allocations.



Fund A ended the quarter up approximately 0.10% before fees and approximately 0.08% after fees.¹ During the same period the S&P 500 fell over 5%.

1. Net of all fees, expenses, and incentive allocations.

Index Comparison

▼ Possible differences:

- ▼ Volatility
- ▼ The level of domestic and international securities
- ▼ Differences in cash positions
- ▼ Differences in credit quality, duration, and liquidity for fixed income securities
- ▼ Index does not reflect fees charged
- ▼ Index results do not reflect dividends
- ▼ Investors cannot invest in the index directly



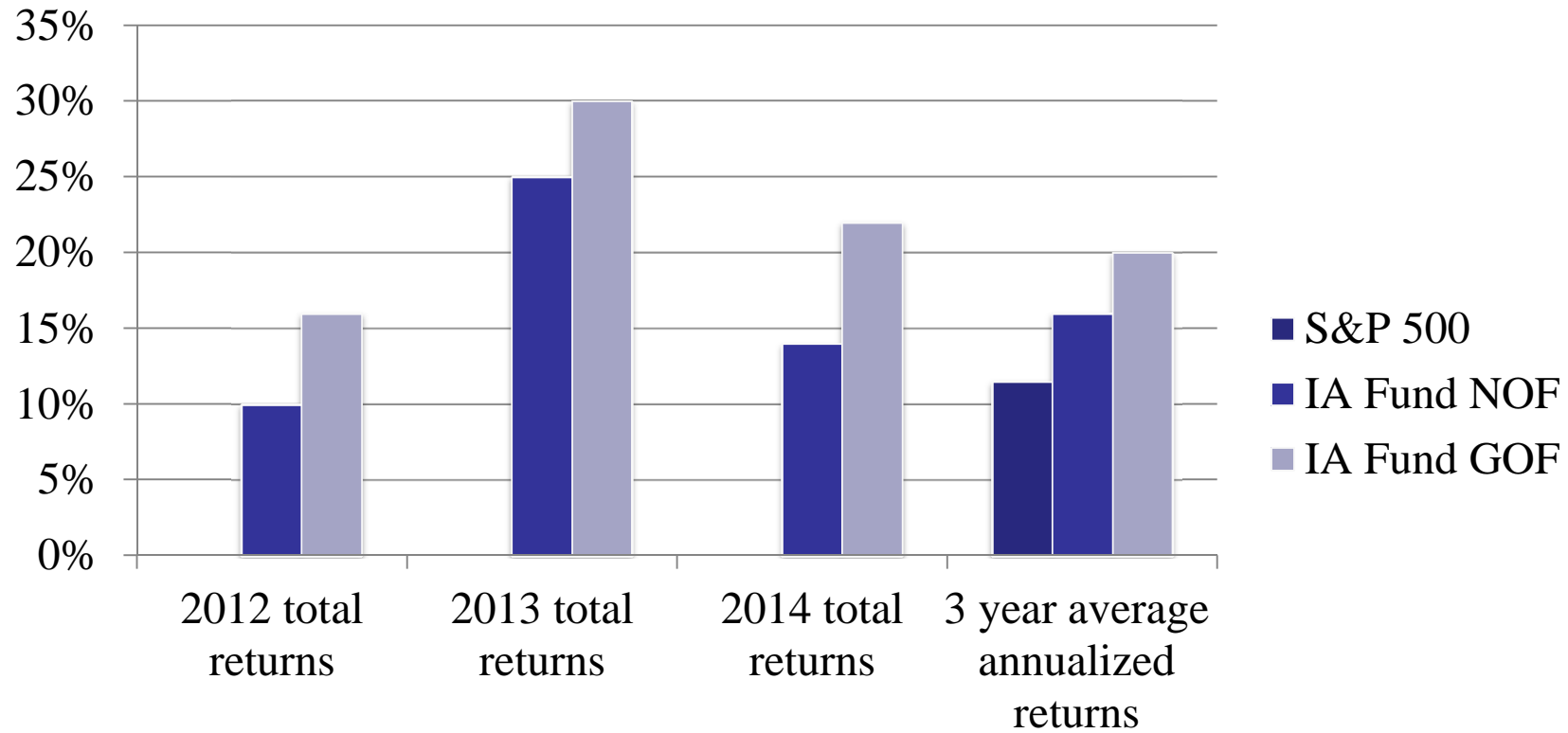
Fund A ended the quarter up approximately 0.10% before fees and approximately 0.08% after fees.¹ During the same period the S&P 500 fell over 5%.²

1. Net of all fees, expenses, and incentive allocations.

2. The S&P 500 Index is an unmanaged broadly based index of the common stocks of 500 large-capitalization companies, within various industrial sectors, most of which are listed on the New York Stock Exchange. The S&P 500 Index does not bear fees and expenses and investors cannot invest directly in the index. Derivatives that may be used to generate Fund A's performance wouldn't be used in connection with the S&P 500 Index, which may affect comparative volatility. The S&P 500 Index is included for purposes of comparison only and is not to be understood to mean that there will be any correlation between the fund and the index.

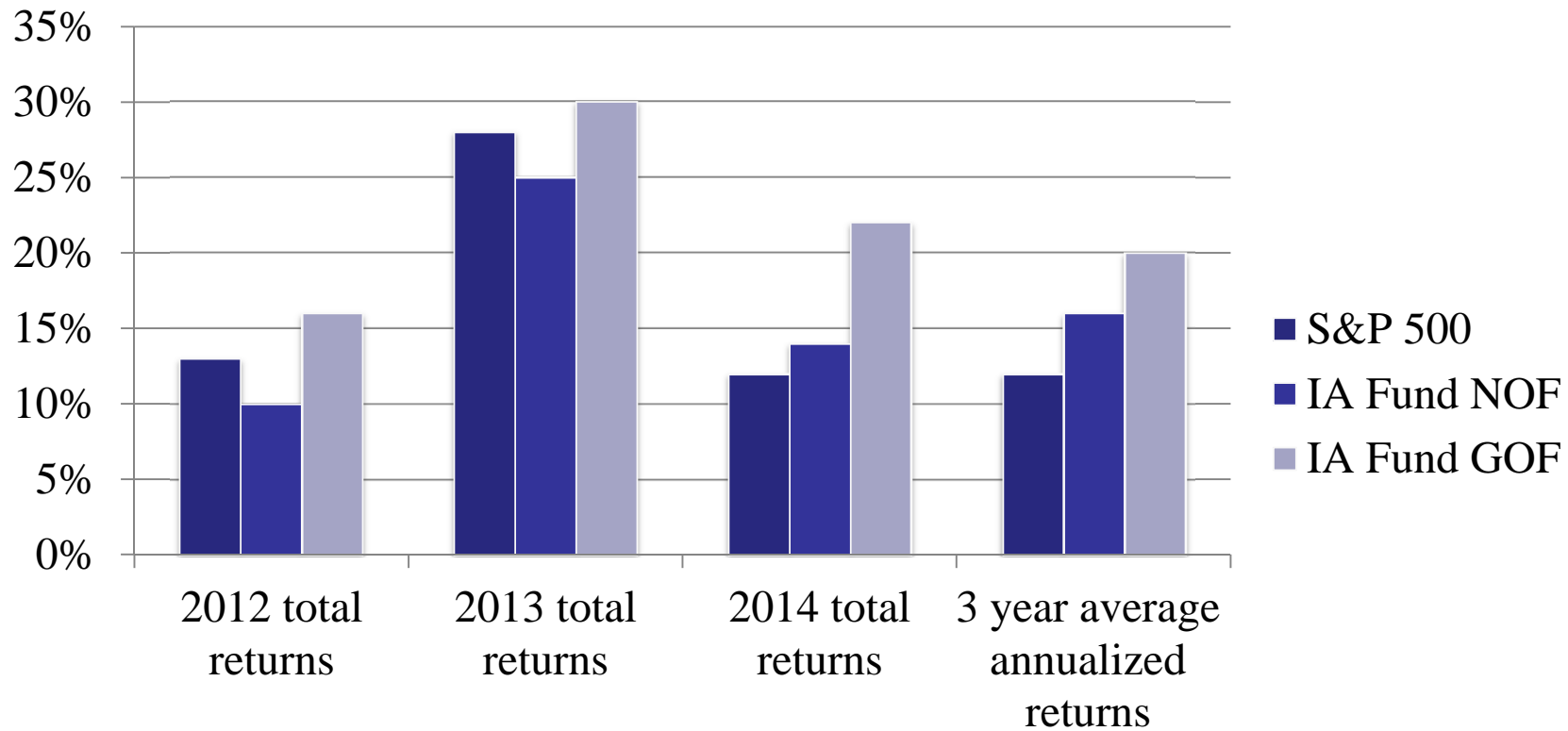
Our annual returns beat the S&P 500 annual returns over the last three years.

**Index Comparison
Dec. 31, 2012-Dec. 31, 2014**



Our annual returns beat the S&P 500 annual returns over the last three years.

**Index Comparison
Dec. 31, 2012-Dec. 31, 2014**



Performance Record Portability

- ▼ May not, in and of itself, be misleading if:
 - ▼ Those managing the prior accounts were primarily responsible for achieving the prior performance;
 - ▼ The prior accounts were similar to the accounts currently under management;
 - ▼ All prior accounts managed in a substantially similar manner are included, unless the exclusion would not result in materially higher performance; and
 - ▼ Proper disclosures are made to avoid presenting the prior performance results in a misleading manner.

- ▼ Must fully comply with the books and records requirements relating to the performance data presented.

Social Media Considerations



Podcast

Social Media

- ▼ **Statements made by the adviser and its supervised persons are advertisements.**
 - ▼ **Compliance policies and procedures**
 - ▼ **Recordkeeping**

- ▼ **Two ways to handle social media:**
 - ▼ **Keep personal pages and company pages separate; or**
 - ▼ **Embrace personal pages with proper policies and monitoring.**

Social Media

▼ Possible use of prohibited testimonials

- ▼ Reviews, endorsements, recommendations, ratings, likes, etc.
- ▼ Partial client list

▼ Use of public commentary in advertising

- ▼ Independent site
- ▼ Unrestricted
- ▼ Updated on a real-time basis

Social Media

- ▼ Advisers may publish a hyperlink along with the independent site's logo on its website.



- ▼ Always consider the advertising provisions of the Advisers Act before sharing a hyperlink.



Skills

Top Skills

- 52 Retirement Planning
- 36 Mutual Funds
- 34 Wealth Management
- 19 Strategic Financial...
- 17 Financial Advisory
- 10 Investment Strategies
- 9 Finance
- 8 Retirement
- 9 Asset Management
- 9 Asset Allocation



also knows about...

- 8 Small Business
- 7 401k
- 5 Investments
- 6 High Net Worth...
- 4 Estate Planning
- 4 Financial Planning
- 3 Employee Benefits
- 3 Financial Planners
- 3 Fixed Annuities
- 5 Securities
- 5 Financial Services
- 2 IRAs
- 2 Bonds
- 2 Insurance
- 3 Pensions
- See 13+ >



Skills

Investment Management

Portfolio Management

Asset Allocation

Financial Planning

Investments

Estate Planning

Retirement Planning

Financial Advisory

Management

Mutual Funds

ETFs

Securities

Financial Planners

Small Business

Financial Risk

See 10+ >



Recommendations

Investment Adviser

Registered Investment Adviser, LLC

“ Cindy is an excellent money manager. I trusted her with my savings and you should too! ”

Jessica was Cindy's client

Ask to be recommended



Recommendations

Investment Adviser

Registered Investment Adviser, LLC

“Cindy is an excellent leader and is doing great work for our community by helping with youth leadership programs.

Jessica was Cindy's client

[Ask to be recommended](#)

Recommendations

Received (1)

Given

Ask for recommendations

Give recommendations

Pending recommendations **2**

“ She is a responsible person.

+ Add to profile

Recordkeeping

- ▼ **Maintain copies of all advertisements**
 - ▼ **Including all documents necessary to substantiate performance claims made in advertisements**

- ▼ **Documents must be maintained for at least five years after the advertisement has stopped circulating**

Global Investment Performance Standards

- ▼ The Global Investment Performance Standards (the “GIPS standards”) were created by the CFA Institute to establish a single global standard of investment performance reporting and has been accepted among investment managers world-wide.
- ▼ The GIPS standards are voluntary and based on the fundamental principles of full disclosure and fair representation of investment performance results.
- ▼ If an adviser claims to be in compliance with GIPS standards, SEC examiners will review the claim in detail. If the adviser is not in compliance with GIPS standards, it will be viewed as misleading under Rule 206(4)-1.

GIPS Compliance

- ▼ **Advisers may claim compliance with the GIPS standards by completing the GIPS Compliance Form.**
 - ▼ **The form will ask for basic information about the adviser. Any additional information regarding total assets, types of products, etc. will be requested, but is not required.**
 - ▼ **On the Compliance Form advisers have the option to be listed on the GIPS standards website as a GIPS compliant firm.**
- ▼ **The GIPS standards must be applied on a firm-wide basis. Advisers claiming GIPS compliance should also maintain a separate GIPS compliance manual.**

Net of Fees

The Advisers Act generally requires performance results to be presented **net of fees**.

GIPS standards generally recommend performance results be presented **gross of fees**.

Portability of Performance

The Advisers Act **permits** portability of certain performance.

GIPS standards **requires** certain prior performance to be included in the new firm's composite.

Model Performance

The Advisers Act generally permits model performance results to be presented in advertisements.

GIPS standards generally permits model performance results to be presented as **supplemental information**.

Benchmarks

The SEC requires a firm to disclose **all material facts** relevant to the comparison of performance results to a benchmark.

GIPS standards require a firm to disclose a **description** of the benchmark.

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Clark Goodwin

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