



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

SECURITIES DIVISION

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Notice Regarding Restrictions on Advertisement of the “Five Star Wealth Manager: Best in Client Satisfaction” and “Five Star Wealth Manager” Awards

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This Notice addresses two third-party awards that have been advertised by persons in our state – the Five Star Wealth Manager: Best in Client Satisfaction¹ award and the Five Star Wealth Manager award. Investment advisers and investment adviser representatives have advertised these awards in a variety of locations, including, but not limited to, magazines, e-mail signatures, letterhead, business cards, websites, informational materials, and office displays. In Washington State, investment advisers and investment adviser representatives are prohibited from using advertisements that contain testimonials or are false or misleading. The Securities Division (“Division”) has determined that advertisement of the Five Star Wealth Manager: Best in Client Satisfaction award is a prohibited testimonial and is false or misleading. This award was granted prior to 2012. The Division has also determined that advertisement of the Five Star Wealth Manager award (granted starting in 2012) is false or misleading absent sufficient disclosure regarding the award process and program.

The Securities Act of Washington and the regulations thereunder contain requirements and restrictions on advertisements by investment advisers and investment adviser representatives. A discussion of applicable provisions, prohibitions, and disclosure requirements is set out below.

Additionally, in Washington State, persons that are not registered as investment advisers or investment adviser representatives are prohibited from advertising these awards because the awards include the term “wealth manager.” Use of terms such as money manager, investment manager, investment planner, or similar terms such as wealth manager and asset planner, by persons that are not properly registered as investment advisers or investment adviser representatives is prohibited under the Securities Act of Washington.

Rules:

Revised Code of Washington (“RCW”) 21.20.020(1). Unlawful acts of person advising another.

(1) It is unlawful for any person who receives any consideration from another party primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

¹ This award may also be entitled “Five Star Wealth Manager Overall Satisfaction.”

- (a) To employ any device, scheme, or artifice to defraud the other person;
- (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
- (c) To engage in any dishonest or unethical practice as the director may define by rule.

This subsection (1) applies whether or not the person is an investment adviser, federal covered adviser, or investment adviser under this chapter or the Investment Advisers Act of 1940.

RCW 21.20.040(4). Registration and notification required – Exemptions.

(4) It is unlawful for any person, other than a federal covered adviser, to hold himself or herself out as, or otherwise represent that he or she is a "financial planner", "investment counselor", or other similar term, as may be specified in rules adopted by the director, unless the person is registered as an investment adviser or investment adviser representative, is exempt from registration under RCW 21.20.040(1), or is excluded from the definition of investment adviser under RCW 21.20.005[(8)].

Washington Administrative Code ("WAC") 460-24A-040. Use of certain terms.

(1) For the purposes of RCW [21.20.040](#)[4], use of any term, or abbreviation for a term, including the word "financial planner" or the word "investment counselor" is considered the same as the use of either of those terms alone.

(2) For the purposes of RCW [21.20.040](#)[4], terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to, the following:

- (a) Financial consultant;
- (b) Investment consultant;
- (c) Money manager;
- (d) Investment manager;
- (e) Investment planner;
- (f) Chartered financial consultant or its abbreviation ChFC; or
- (g) The abbreviation CFP.

WAC 460-24A-100(1)(a)&(e). Advertisements by investment advisers.

(1) It shall constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for an investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:

(a) 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 such investment adviser; or

....

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

Discussion:

The specific programs addressed in this Notice are the Five Star Wealth Manager: Best in Client Satisfaction and Five Star Wealth Manager programs. The Five Star Wealth Manager: Best in Client Satisfaction program was run by Crescendo Business Services, LLC (“Crescendo”) prior to 2012. It was replaced with the Five Star Wealth Manager program in 2012. Although this Notice addresses two specific award programs, the Division will apply similar analysis to like programs.

Five Star Wealth Manager: Best in Client Satisfaction Award

The Division has concluded that advertisement of the Five Star Wealth Manager: Best in Client Satisfaction award is a testimonial prohibited under WAC 460-24A-100(1)(a). Prior to 2012, Crescendo gave this award to financial planners, advisers, attorneys, Certified Public Accountants (“CPAs”), and others with the objective of identifying wealth managers that scored highest in overall satisfaction. The selection of recipients was based on client evaluations in nine categories, adjusted to reflect peer input, regulatory history, and a review by a “Blue Ribbon Panel” (reported to be a panel of unidentified industry professionals).

As a part of its award process, Crescendo’s marketing firm sent surveys to approximately 25 percent of high-net worth households in a given market to solicit nominations and evaluations of “wealth managers” in that market. Clients nominated investment advisers and investment adviser representatives for the award, and the same clients that nominated the advisers and representatives evaluated them. From these evaluations, client “scores” were determined and adjusted to reflect peer input, regulatory history, and a Blue Ribbon Panel review. The award title implies that an investment adviser’s or investment adviser representative’s typical client received quality service from the nominee. However, there was no requirement that a certain number or percentage of a nominee’s clients be surveyed in order for the person to receive the award. In addition, the number of actual evaluations collected and the number of investment advisers and investment adviser representatives included in the evaluations were not published, and it is unknown whether duplicate evaluations were processed.

The Division has also concluded that advertisement of the Five Star Wealth Manager: Best in Client Satisfaction award is false or misleading and is prohibited under WAC 460-24A-100(1)(e). Use of the award title Five Star Wealth Manager: Best in Client Satisfaction suggests that all or a statistically valid sampling of an investment adviser’s or investment adviser representative’s clients were surveyed when this did not necessarily occur. The title may also imply that the recipient was a top-rated adviser in a category when this may not have been the case. This is false or misleading.

Five Star Wealth Manager Award

The Division has concluded that, absent additional disclosure, advertisement of the Five Star Wealth Manager award is false or misleading. In 2012, Crescendo changed the title of the award, the criteria for receiving it, and the research objective of the award. The Division did not evaluate the Five Star Wealth Manager award as a testimonial because the Division was informed that clients were not surveyed for input regarding their experiences with an investment adviser or investment adviser representative. High-net worth households continue to be surveyed in this process, but are only surveyed as a part of a disclosure history review.

The Program Summary and Research Methodology for the award, published in October 2011, states that the research objective of the Five Star Wealth Manager award “is to develop a list of wealth managers in a given market who satisfy objective eligibility and evaluation criteria that are associated with providing quality services to clients.” The objective of identifying wealth managers that provide quality services to clients suggests that the award process is based upon client input. However, this is misleading because clients are only surveyed as a part of Crescendo’s disclosure history review, so the award does not evaluate the quality of services provided to clients. In addition, the award title Five Star Wealth Manager is misleading. This award title may suggest that the award process included substantive client input. It may also imply that the recipient was a top-rated adviser in a category when this was not necessarily true. Investment advisers and investment adviser representatives cannot advertise the Five Star Wealth Manager award unless the advertisement contains the criteria upon which the award was based and additional disclosures given below.

Conclusions:

1. Due to the weight of client evaluations in the award process and uncertainty in the number of a recipient’s clients that were surveyed, advertisement of the Five Star Wealth Manager: Best in Client Satisfaction award is a testimonial prohibited under WAC 460-24A-100(1)(a). Advertisement of the Five Star Wealth Manager: Best in Client Satisfaction award is also false or misleading under WAC 460-24A-100(1)(e). The award title implies that all or a statistically valid sampling of the recipient’s clients were surveyed and satisfied with their advisers’ services when this did not necessarily occur. It may also imply that the recipient was a top-rated adviser in a category when this may not have been the case. Due to these factors, advertisement of the Five Star Wealth Manager: Best in Client Satisfaction award is false or misleading under WAC 460-24A-100(1)(e).
2. Advertisement of the Five Star Wealth Manager award is false or misleading under WAC 460-24A-100(1)(e) if the award is used without sufficient disclosure. Investment advisers and investment adviser representatives in Washington State may not advertise the Five Star Wealth Manager award unless the advertisement includes the criteria for receiving the award and the additional disclosures outlined below.
3. Additionally, under RCW 21.20.040(4) the Five Star Wealth Manager: Best in Client Satisfaction and Five Star Wealth Manager awards may not be advertised by persons that are not registered as investment advisers or investment adviser representatives because advertisement of this award may be holding oneself out as a “wealth manager.”

Required Five Star Wealth Manager Award Disclosures:

To advertise the Five Star Wealth Manager award, the advertisement must disclose that the award does not evaluate the quality of services provided to clients. In addition, the advertisement must (1) prominently display the criteria on which the award was based (please see the criteria below), (2) disclose any facts that the recipient knows would call into question the validity of the award or appropriateness of advertising it (as applicable), (3) disclose that the recipient may have had unfavorable ratings, (4) clearly and prominently disclose the category for which the award was determined, the number of advisers considered for the award, and the percentage of advisers that received the award, (5) disclose that the rating is not indicative of the person's future performance, (6) disclose who created and conducted the survey, and (7), if the person paid any fees to Crescendo (for use of proprietary materials or otherwise) disclose this fact. In addition, the advertisement may not state or imply that an investment adviser or investment adviser representative was a top-rated wealth adviser.

The Five Star Wealth Manager award is based on the following criteria:²

Eligibility Criteria – Required

1. Credentialed as an investment adviser representative, a FINRA-registered representative, a CPA or a licensed attorney.³
2. Actively employed as a credentialed professional in the financial services industry for a minimum of five years.
3. Favorable regulatory and complaint history review.*
4. Fulfilled their firm review based on internal firm standards.
5. Accepting new clients.

Evaluation Criteria – Considered

1. One-year client retention rate.
2. Five-year client retention rate.
3. Non-institutional discretionary and/or non-discretionary client assets administered.
4. Number of client households served.
5. Education and professional designations.

*The disclosure must include Crescendo's definition of "favorable regulatory and complaint history review" in your disclosure section. To qualify as having a favorable regulatory and complaint history for this award, the person cannot have (1) been subject to a regulatory action that resulted in a license being suspended or revoked, or payment of a fine, (2) had more than a total of three customer complaints filed against them (settled or pending) with any regulatory authority or Five Star Professional's consumer complaint process, (3) individually contributed to a financial settlement of a customer complaint filed with a regulatory authority, (4) filed for bankruptcy, or (5) been convicted of a felony.

² Please note that the criteria for receiving the award may change. Therefore, registrants must ensure that the criteria disclosed in advertisements reflect the criteria considered at the time the award was granted.

³ It is possible that Crescendo may have changed this criterion to being credentialed as a registered investment adviser or an investment adviser representative.