ANAMETRICS INVESTMENT MANAGEMENT

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Anametrics Investment Management
File No. 132 3

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Please accept our apologies for the delay in answering your letter.

Section 206(4) of the Investment Advisers Act of 1940 (the "Act") prohibits any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to engage in any act, practice or course of business which is fraudulent, deceptive, or manipulative. Rule 206(4)-1(a) (5) under the Act provides that it shall constitute a fraudulent, deceptive or manipulative act for any investment adviser to distribute, directly or indirectly, any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading.

The Act, and the rules thereunder, do not prohibit an investment adviser from informing prospective clients of the "performance" of all accounts under management so long as such information is not false or misleading. Care, therefore, should be taken in providing prospective clients with information about the "performance" of accounts under management.

In the absence of a specific statement as to what is the relevance to a prospective client of the "performance" of accounts under the management of an investment adviser, we assume that the implied relevance of such information is that it is an indication of the competence of the investment adviser or the experience of the adviser's clients and, thus, an indication of the competence that the prospective client can expect to be exercised on his behalf or an example of an investment experience that is possible for the prospective client.

Information concerning performance is misleading if it implies something about, or is liekly to cause an inference to be drawn concerning, the experience of advisory clients, the possibilities of a prospective client having an investment experience similar to that which the performance data suggests was enjoyed by the adviser's clients, or the advisor's competence when there are additional facts known to the provider of the information, or which he ought to know, which if also provided would cause the implication not to arise or prevent the inference from being drawn.

Thus, a statement that accounts appreciated in value 25% may cause an inference to be drawn about advisory competence that would be drawn if it was also stated that the S & P 500 increased 40% during the same period. But, for the "performance" of an account to be compared with the S & P 500 or any other index, it is necessary that any facts bearing on the fairness of any comparison be stated. For example, if dividends or income are included in one of the figures to be compared, it would seem that they should be included in the other, and, if not, that mention should be made of the fact.

Where there are differences between an account and an index with which it is compared in volatility of market prices this too should be mentioned. Otherwise an account which invested in securities that had a high volatility, with respect to that of an index, might appreciate greater than the index during a period when the market was going up and, thus, cause an inference to be drawn about advisory competence which would not be drawn if the volatility of the securities in which the account was invested was also stated.

Other factors which might be relevant are (1) the type of security i.e., equity or debt in which an account is invested, (2) the object of the account i.e., growth, income, stability, or some combination of these goals, and (3) the diversification in the account.

The giving of information concerning the average performance of accounts may convey a misleading impression of advisory competence and of the experience of accounts under management. For example, assume two accounts under management: one with assets of $100,000 and the other with assets of $1,000,000. Assume further that the first account goes up to $150,000 and the second account goes down to $500,000. The "performance" of the first account may be described as a 50% gain and the performance of the latter account may be described as a 50% loss. The average performance could be described as zero. Such a statement by itself would, however, be misleading.

Providing information as to the percentage change of each account also may be misleading. A mere statement with respect to the foregoing example that one account under management increased 50% and one account dcreased 50% may contain an implication or cause an inference to be drawn about advisory competence or the experience of advisory accounts which would not arise if it was also stated that the account which increased 50% went from $100,000 to $150,000 and that the account which decreased 50% went from $1,000,000 to $500,000.

Information concerning performance of accounts over a period or periods marked by particular market characteristics may contain an implication or cause an inference to be drawn about the possibility of a client enjoying a similar experience which would not arise if information about the special character of the period or periods was also provided.

If accounts are subject to commission, advisory and other expenses and charges, performance figures not reflecting such expenses and charges may convey an impression or give rise to an inference concerning the experience of existing accounts which is misleading.

While we have attempted to indicate, generally, what kind of information is necessary to prevent information about performance from being misleading, whether or not any communication is or is not misleading will depend on all of the particular facts including (1) the form as well as the content of a communication, (2) the implications or inferences arising out of the context of the communication and (3) the sophistication of the prospective client.

Stanley B. Judd, Assistant Chier Counsel
Division of Investment Management

INQUIRY 1: ANAMETRICS INVESTMENT MANAGEMENT

SUBSIDIARY OF ANAMETRICS, INC.
299 PARK AVENUE
NEW YORK, NEW YORK 10017
PLAZA 8 5500

November 12, 1976

Securities and Exchange Commission
Division of Investment Regulation
500 North Capitol Street
Washington, D.C. 20549

Gentlemen:

As as Investment Management firm, we have been presented with a situation on which we would like your opinion.

A prospective client has come to us (and several other advisors, I believe) and asked for some performance data. Specifically, he has asked for the performance of growth oriented accounts at our firm for the years 1972, 1973, 1974, 1975 and the first months of 1976. He would like these figures compared with the Dow Jones Industrial Average and the Standard & Poors Stock Average.

We would like to supply this information to this prospective client but we are unsure exactly what we may furnish him.

Please advise us at your earliest convenience. Thank you for your efforts.

Sincerely,

Andrew H. Massie, Jr.