

DOW THEORY FORECASTS, INC.

Feb 2, 1978

TOTAL NUMBER OF LETTERS: 2

**SEC-REPLY-1:
RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT**

**Our Ref No. 77-998-CC
Dow Theory Forecasts, Inc.
File No. 132-3**

Based on the foregoing facts and representations, it appears that the proposed wholly-owned subsidiary of Dow Theory Forecasts, Inc. would be required to register as an investment adviser under the Investment Advisors Act of 1940 ("Act"). Section 202(a) (11) of the Act defines an investment adviser as:

Any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities...

It is not necessary for a person to render advice on particular securities to be an investment adviser within the meaning of Section 202(a) (11); rendering advice on securities in general or as to the advisability of investing in, purchasing or selling securities is sufficient to bring a person within the definition.

Since the proposed subsidiary will be a separate corporate entity from Dow Theory Forecasts, Inc. and will be publishing a separate periodical, it would have to file a separate application on Form ADV, and it would not be sufficient for Dow Theory Forecasts, Inc. simply to amend Schedule E for its own Form ADV.

Sidney L. Cimmet
Assistant Chief Counsel

**INQUIRY-1:
ICE MILLER DONADIO & RYAN
(FORMERLY ROSS MCCORD ICE & MILLER)
10TH FLOOR 111 MONUMENT CIRCLE
AREA CODE 317 635-1213
INDIANAPOLIS 46204**

September 27, 1977

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

Gentlemen:

Re: Dow Theory Forecasts, Inc.

This firm represents Dow Theory Forecasts, Inc., Hammond, Indiana, an investment adviser registered pursuant to the provisions of the Investment Advisors Act of 1940 (the "Act"). The registrant is engaged in the business of publishing investment newsletters under the titles "Dow Theory Forecasts" and "The Digest". It is contemplating the organization of a wholly-owned subsidiary, the business of which would be the publication of a new periodical tentatively titled "Money and Financial Planning Guide (the "Guide"). The purpose of this letter is to seek an interpretive opinion as to whether the activities of the subsidiary would require its registration under the Act.

The Guide will include articles on such subjects as market movements in general, industry trends and characteristics, legislation proposed or enacted by Congress, estate planning, real estate transactions, and consumer information such as the availability of discount air fares. Included herein are copies of articles which have previously appeared in the registrant's other publications, but which are illustrative of the types of articles to be included in the Guide. No advice or recommendations will be given in the Guide with respect to any specific securities mentioned by name, or any security which would be readily identifiable from the context of the article; nor will the Guide include reports attributed to other sources as to recommendations about specific securities.

Some articles to be included in the Guide will appear under a "byline" and will be written by contributors who will not be employees of the publisher. Those articles will be edited prior to publication, but a general disclaimer included with each issue will point out that the opinions expressed in such articles are not those of the publisher. The content of articles selected for publication will follow the criteria set forth above.

Dow Theory Forecasts, Inc. intends to promote subscriptions to the Guide by the mailing of advertisements with respect thereto to persons subscribing to its publications. However as stated above, the Guide will be published by a separate wholly-owned subsidiary; will not be marketed as a publication of Dow Theory Forecasts, Inc.; will not carry the name "Dow Theory Forecasts" and will not use the registrant's logo or otherwise utilize the name "Dow Theory Forecasts".

In our opinion, if publication of the Guide as described herein were its only business, that business would not require registration of Dow Theory Forecasts, Inc. or the subsidiary as an investment adviser. We are of the further view that Dow Theory Forecasts, Inc. may carry on its investment newsletter business and publication of the Guide through a wholly-owned subsidiary, without registration of that subsidiary under the Act.

We respectfully request the issuance of an interpretative opinion (or, if deemed appropriate, a "no action" letter,) confirming these views.

If you concur in this view, we would appreciate your consideration of a further matter. The question has been raised as to whether the Guide could include articles incorporating the names of specific securities, as issuers having the characteristics discussed in the articles, without any recommendations being made. Examples could include a list of the ten largest municipal bond funds included in an article generally describing such funds, the advantages and disadvantages thereof, and their marketing programs and management policies; a list of the securities most commonly held by certain institutional investors, in connection with an article discussing the concentration of such holdings; or a listing of issuers offering partially tax-exempt dividend income in an article discussing in a general way the existence of such securities. Would (1) the use of such articles, or (2) the use of such articles including listings in question, cause you to withhold your concurrence in our views expressed above?

Finally, if in your view registration of the subsidiary under the Investment Advisers Act is required on either (or both) of the hypotheses set forth above, we are seeking your advice as to whether that registration should be accomplished by amendment to the Form ADV currently on file on behalf of its parent, Dow Theory Forecasts, Inc. As the persons associated with the Guide will be only persons associated with Dow Theory Forecasts, Inc., and as all outstanding shares of the Guide will be owned by Dow Theory Forecasts, Inc., it would appear to involve unnecessary duplication if the subsidiary were required to file a separate registration on Form ADV. In lieu thereof, should registration be required, Dow Theory Forecasts, Inc. would propose to accomplish that registration by amending Schedule E to its Form ADV for the purpose of setting forth the facts relating to ownership of the subsidiary, its personnel, and business including subscription rates and other pertinent information.

Should this proposal be acceptable to the Commission, Dow Theory Forecasts, Inc. would be willing to undertake to file a separate registration on behalf of the subsidiary if at any time the ownership or persons associated with the subsidiary were not identical as described herein.

The registrant would, of course, in any event amend Schedule E to disclose the separate business being carried on in the subsidiary if it should be determined that such business did not constitute an investment advisory business.

Thank you for your consideration of the foregoing questions.

Very truly yours,

ICE MILLER DONADIO & RYAN
Berkley W. Duck III