

Dow Theory Forecasts, Incorporated

Publicly Available August 26, 1983

**SEC LETTER
1940 Act Rule 206(4)-1(a)(5)**

July 27, 1983

**Publicly Available August 26, 1983
Our Ref. No. 83-139-CC
Dow Theory Forecasts, Inc.
File No. 801-00440-3**

Rule 206(4)-1(a)(2) does not permit an advertisement which refers, directly or indirectly, to past specific recommendations of an investment adviser which were or would have been profitable to any person even if the advertisement offers to provide a full list of all recommendations made during the preceding period of not less than one year with all the details specified in the rule. What the rule does is to permit both an advertisement which contains the full list with the details and an advertisement which only offers to provide such a list with the details. Thus, a direct or indirect reference to past specific recommendations of an investment adviser which were or would have been profitable to any person violates the rule unless all recommendations within the immediately preceding period of not less than one year are provided with all the necessary details and the statement required by rule 206(4)-1(a)(2)(B).

We have indicated, however, that the rule is not violated by the advertisement of the performance of a list of all securities actually recommended by the adviser within a period of a year or more. See, James D. Oberweis (pub. avail. July 25, 1983).

Rule 206(4)-1(a)(5) under the Act, however, makes it a violation for an investment adviser to publish an advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading. We have also stated that in the context of an advertisement by an investment adviser, information concerning performance would be misleading, and, thus, the publishing of such an advertisement by an adviser would violate rule 206(4)-1(a)(5), if it implies something about, or is likely to cause an inference to be drawn concerning, the experience of advisory clients, the possibilities of a prospective client's having an investment experience similar to that which the performance data suggest was enjoyed by the adviser's clients, or the adviser's competence, when there are additional facts which the adviser knew or ought to have known, which if also disclosed would prevent the implication from arising or the inference from being drawn. See, Edward F. O'Keefe (pub. avail. April 13, 1978) and Anametrics Investment Management (pub. avail. May 5, 1977). An investment adviser publishing an advertisement concerning the performance of securities recommended by the adviser should, therefore, exercise care that the advertisement not give rise to unwarranted implications or inferences.

Thus, rule 206(4)-1(a)(5) would be violated to the extent that an advertisement of the performance of a list of recommended securities implies something about, or is likely to cause an inference to be drawn concerning, the experience of advisory clients, the possibilities of a prospective client's having an investment experience similar to that which the performance data suggest was enjoyed by the adviser's clients, or the adviser's competence, when it omits additional facts which the adviser knew or ought to have known (such as the performance of its buy-sell-hold recommendations or the performance of a list of different securities recommended by the adviser) which if also disclosed would prevent the implication from arising or the inference from being drawn.

Stanley B. Judd
Deputy Chief Counsel

LETTER TO SEC
April 2, 1983
Mr. Sid Cimmet, Chief Counsel
Office of Investment Management
Securities and Exchange Commission
450 5th Street N.W.
Washington, D.C. 20549

RE: Investment Advisors Act of 1940/Rule 206(4)-1

Dear Mr. Cimmet:

On behalf of Dow Theory Forecasts, Inc., a no-action statement is respectfully requested, regarding Rule 206(4)-1 and the proposed method of presenting past specific recommendations in the various newsletters published by the Company.

Following is a schedule of the pertinent facts:

I. Company name and address:

Dow Theory Forecasts, Inc.
7412 Calumet Avenue
Hammond, Indiana 46324-2692

II. Description of the Company business:

Dow Theory Forecasts, Inc. is an investment adviser registered with the SEC under the Investment Advisors Act of 1940. The Company publishes four periodic newsletters relating to securities. Each letter is available on a separate subscription basis. Below is the name and a short description of each newsletter.

(A) Dow Theory Forecasts

Date first published: November 19, 1945
Current number of subscribers: 21,655
Subscription price: \$148.00 per year/published weekly

Description: This newsletter concentrates on the larger firms, mainly NYSE issues and Fortune 500 firms. In addition to publishing capsule write-ups on various stocks, the newsletter contains a recommended list of approximately 175 stocks. Also, periodically the newsletter contains a listing of approximately 750 issues on a "buy-sell-hold" basis and other informational listings such as 94 electric utilities rated A, B, or C, based on financial strength.

(B) The Stock Service Digest

Date first published: January 8, 1965
Current number of subscribers: 1,077
Subscription price: \$42.00 per year/published bi-weekly

Description: This newsletter highlights opinions of various Investment Advisory Services. In addition to providing capsule write-ups on various issues, bi-monthly the newsletter contains a listing of approximately 750 issues on a "buy-sell-hold" basis. There is no "master list" of recommended stocks published in this newsletter.

(C) The Low Priced Stock Survey

Date first published: May 19, 1980

Current number of subscribers: 19,763
Subscription price: \$62.50 per year/published bi-weekly

Description: This newsletter highlights stocks priced under \$20 from all three exchanges. It is intended for use by individual investors interested in low-priced stocks. In addition to providing capsule write-ups on various issues, the newsletter contains a Master List of Recommended Low-Priced Stocks.

(D) Emerging Growth Stocks

Date first published: December 6, 1982
Current number of subscribers: 3,267
Subscription price: \$225.00 per year/published bi-weekly

Description: This newsletter places emphasis on companies with less than \$120MM in sales. Stocks are primarily in the over-the-counter market. The letter is intended for use by a select group of individual investors who are looking for stocks of the future and are willing to take an above-average risk. Each issue contains a write-up on one new stock recommendation and includes follow-up on previous recommendations.

III. Proposed method of presenting past specific recommendations:

Due to the increased demand from subscribers, and in order to provide them with the necessary information to evaluate the past performance of recommendations, the Company proposes to disclose a graph or schedule of the performance of all master list recommendations in each newsletter. Three of the four newsletters contain the master list of recommendations which will be charted (Dow Theory Forecasts, The Low Priced Stock Survey, and Emerging Growth Stocks).

IV. Two specific points in question:

Rule 206(4)-1(a)(2) specifically states that this type of advertising shall not be prohibited where an offer to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year is also made.

A) As the Company accumulates the information for a newsletter, it intends to begin disclosing the past performance graph in that publication. In our opinion, each newsletter is a separate and distinct advisory service and the subscribers will benefit from this disclosure. A potential problem exists if the SEC interprets the listing indicated by Rule 206(4)-1(a)(2) to include all the master list recommendations, rather than viewing each newsletter as a separate advisory service. We feel a listing as such would be misleading and would not allow a subscriber to evaluate the effectiveness of his/her subscription to an individual newsletter.

B) In the newsletter Dow Theory Forecasts, several informational listings are published in addition to the "Recommended List of Stocks". The informational listings include, for example, approximately 750 securities on a "buy-sell-hold" basis. These informational listings are published as a means to assist the subscribers in evaluating the stocks in their portfolio. These informational listings have always been segregated from the "Recommended List of Stocks" and are not considered to be recommendations in the newsletter. It is the Company's intention to provide their subscribers with the most accurate information for them to evaluate the advisory service and, accordingly, the Company is accumulating past performance information for only those securities which the newsletter places on its "Recommended List of Stocks". Because the stocks included on the informational listings are not considered to be "Recommendations", the past performance of these listings is not being retained.

Based on the foregoing, a no-action statement is respectfully requested to the effect that:

The method of presenting and information retained on past specific recommendations in the various newsletters published by Dow Theory Forecasts, Inc. as proposed by the Company is in compliance with Rule 206(4)-1.

If you require any additional information, please contact me.

Respectfully submitted,

Thomas R. Fuller
Crowe, Chizek and Company
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Michigan City, Indiana 46360