

Investment Advisers Act of 1940 - Rule 206(4)-1(a)(2)

Apr 17, 1976

Starr and Kuehl, Inc.

TOTAL NUMBER OF LETTERS: 2

SEC-REPLY-1: Our Ref. No. 75-1041CC

Starr and Kuehl, Inc.

File No. 801-9955-3

**RESPONSE OF THE BRANCH OF INVESTMENT ADVISER REGULATION
DIVISION OF INVESTMENT MANAGEMENT REGULATION**

Rule 206(4)-1 under the Investment Advisers Act of 1940 (the "Act") prohibits the use of certain kinds of advertisements by investment advisers. Paragraph (a) (2) of that rule makes it unlawful for an investment adviser directly or indirectly, to publish, circulate or distribute any advertisement:

which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person; Provided, however, That this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than 1 year if such advertisement and such list if it is furnished separately: (A) state the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and (B) contain the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."

Paragraph (b) of Rule 206(4)-1 defines the term advertisement to include any notice, circular, letter or other written communication addressed to more than one person which offers, among other things, "any analysis, report or publication concerning securities."

Paragraph (a) (2) of the advertising rule is intended to prohibit advertisements by an investment adviser which would give prospective advisory clients a misleading impression of the adviser's investment performance by referring only to past recommendations of the adviser which were or would have been profitable while ignoring those recommendations which were unprofitable. It appears that your proposal to furnish selected back issues of your advisory publication might, depending on the circumstances, be in violation of paragraph (a) (2) of the Rule to the extent that it may be used to solicit new subscribers to your advisory publication. However, based on the limited facts contained in your letter, we are unable to take a position at this time as to whether your proposal would be unlawful because the circumstances under which the offer of back issues is to be made are unclear to us. Therefore, we request that you provide us with additional information concerning your proposal, including the purpose for which previous issues of your publication have been requested and the basis upon which you will select particular issues which you regard as representative of the publication. A description of the content of any materials which may accompany the distribution of such back issues should also be included. This information will enable us to provide you with more definitive advice concerning the legality of your proposed activity.

Seymour Spolter,
Special Counsel
Branch of Investment Adviser Regulation

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**INQUIRY-1:
STARR & KUEHL option specialists
235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104
(415) 982-4417**

27 October 1975

**Securities & Exchange Commission
Washington, D.C.
Ref: File #801-9955**

Gentlemen:

We often receive requests from new subscribers and other interested parties for "back issues" of our market letter, Option Opinion.

In response to these requests we are considering the compilation of a selection of previous issues which we consider to be representative and which would divulge what our basic viewpoint was at these different points in time. In no way would this be intended as representing a complete history of recommendations (this task would be near-to-impossible as we make dozens of recommendations/comments each week and do not make a practice of following up on each and every selection or comment) and would contain an express statement to this effect.

What we would like is an expression from you as to the proper format under which such a selection of "back issues" might be released and what restrictions, statements or whatever are required under S.E.C. regulations.

We would appreciate a prompt response and comment.

Thank you for your attention.

Yours truly,

J. B. Casper
President