

KLEINWORT BENSON

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

December 15, 1993

RESPONSE OF THE OFFICE OF CHIEF COUNSEL DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 93-797-CC

**Kleinwort Benson Investment Management Limited;
Kleinwort Benson Pacific Limited;
Kleinwort Benson Investment Management KK;
Kleinwort Benson Investment Management Americas Inc.**

File No. 801-1224

In your letter dated December 2, 1993 you request our concurrence with your opinion that Kleinwort Benson Investment Management Limited ("KBIM"), Kleinwort Benson Investment Management KK ("KBIM KK"), and KBIM Pacific Limited ("KBIM Pacific") would not be required to register under the Investment Advisers Act of 1940 (the "Advisers Act") if, as more fully described in your letter, they share certain personnel with their affiliate, Kleinwort Benson Investment Management Americas Inc. ("KBIMA"), a United Kingdom investment adviser that is registered with the Commission under the Advisers Act.

KBIM and KBIMA are both wholly owned subsidiaries of Kleinwort Benson Investment Management Holdings, Ltd. ("Holdings"), which in turn is a wholly owned subsidiary of Kleinwort Benson Group, plc. The offices of Holdings and KBIM are in London, where all of KBIM's and some of KBIMA's portfolio managers are located. KBIMA has offices in New York, Tokyo, and Hong Kong. Most of KBIMA's clients are United States citizens and residents. Both KBIMA and KBIM are members of the Investment Management Regulatory Organisation, the United Kingdom self-regulatory organization that regulates persons engaged in the investment management business. Most of KBIM's clients are United Kingdom residents, but KBIM also has clients located in 61 other countries. KBIM is not registered with the Commission under the Advisers Act.

KBIM Pacific is a subsidiary of KBIM and provides investment management services with respect to Pacific rim securities. KBIM Pacific maintains an office in Hong Kong, where a KBIMA portfolio manager shares an office with a KBIM Pacific portfolio manager. KBIM KK is an indirect subsidiary of Holdings that provides investment management services with respect to Japanese securities. KBIM KK maintains an office in Tokyo, where a KBIMA portfolio manager shares office space with two KBIM KK portfolio managers. Both KBIM Pacific and KBIM KK are organized under local law and must comply with local law in transactions with local clients. Neither KBIM Pacific nor KBIM KK is registered with the Commission under the Advisers Act.

KBIMA proposes to use the services of ten portfolio managers employed by KBIM, KBIM Pacific, and KBIM KK on a part-time basis (the "Dual Employees"). All of the portfolio managers of KBIMA who are located in London will move into KBIM's London offices. As described in further detail below, KBIMA's proposal will permit the Commission to monitor the activities of KBIM, KBIM Pacific, KBIM KK, and any other affiliate of KBIMA that provides advice to KBIMA's United States clients or has access to any information concerning which securities are recommended to KBIMA's clients prior to the effective dissemination of the recommendations (the "Participating Affiliates").

KBIMA proposes to continue to receive research from, among other sources, some of its affiliates (other than the Participating Affiliates) ("KB Research Affiliates"). You state that this research consists of statistical and other factual information on non-United States currencies, industries and companies,

advice regarding economic factors and trends, and information, advice and recommendations on specific companies and securities regularly prepared by the KB Research Affiliates for distribution to non-United States persons. You state that there is a "Chinese wall" between KBIMA and the KB Research Affiliates. In those geographic locations where KBIMA (or a Participating Affiliate) and a KB Research Affiliate both have offices, the KB Research Affiliates are located either in a separate building or if in the same building, on separate floors. The KB Research Affiliates do not have access to KBIMA's personnel and files, and do not have knowledge of the portfolios of KBIMA's clients or information concerning KBIMA's investment decisions and recommendations. In addition, KBIMA portfolio managers and other KBIMA employees (including the Dual Employees) do not have access to the KB Research Affiliates' analysts. KB Research Affiliates do not prepare research reports or other information specifically for use by KBIMA, and KBIMA is not permitted to request that any KB Research Affiliate prepare a research report or provide other information concerning a particular company or industry. You represent that, except for the research reports delivered to KBIMA, there is an absolute prohibition on communication between KBIMA personnel and the KB Research Affiliates with respect to the research generated by the KB Research Affiliates.¹

Section 203(a) of the Advisers Act requires any investment adviser, whether domestic or foreign, that uses United States jurisdictional means in connection with its business as an investment adviser to register with Commission, unless exempt from registration. The Division recently has taken the position that affiliated companies of registered foreign advisers would not have to register under the Advisers Act if they are separately organized (i.e., two distinct entities); the registered entity is staffed with personnel (whether physically located in the United States or abroad) who are capable of providing investment advice; all persons involved in United States advisory activities are deemed to be "associated persons" of the registrant;² and the Commission has access to trading and other records of each affiliate involved in United States advisory activities, and to its personnel, to the extent necessary to monitor and police conduct that may harm United States clients or markets.³

In Mercury Asset Management, the Division did not require certain foreign affiliates of two registered investment advisers to register under the Advisers Act when the affiliates gave investment advice to United States clients only through the registered advisers. The Division's position was based on the representations that the unregistered affiliates would be "associated persons" of the registered advisers, and that the affiliates would consent to United States jurisdiction and afford the Commission access to personnel and certain records regarding their United States advisory activities and related transactions.

While the proposed activities of the Dual Employees and the Participating Affiliates are consistent with the Division's approach, KBIMA also proposes to receive research from the KB Research Affiliates,⁴ which will not consent to United States jurisdiction or provide the Commission access to their books and records, and personnel. You state that this research is not prepared specifically for KBIMA clients and that "Chinese walls" prevent KB Research Affiliates from gaining access to information regarding recommendations made to KBIMA's clients. You believe that these restrictions make the activities of KB Research Affiliates sufficiently separate and independent from those of KBIMA and the Participating Affiliates so that the KB Research Affiliates need not make the representations required of the Participating Affiliates. You represent that the KB Research Affiliates are of the opinion that they need not register independently under the Advisers Act.⁵

Without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission under Section 203(a) if the Participating Affiliates and KBIMA employ the Dual Employees as described in your letter, without the Participating Affiliates' registering with the Commission under the Advisers Act. Our position is based on the facts and representations in your letter, which because of their importance, are restated below:

KBIMA:

KBIMA represents that:

- A. it will promptly, upon receipt of an administrative subpoena, demand or a request for voluntary cooperation made during a routine or special inspection or otherwise, provide to the

Commission or to the Commission's staff any and all of the books and records that it is required to keep under the Advisers Act, and make available for testimony before or other questioning by the Commission or the Commission's staff any and all personnel (other than clerical or ministerial personnel) identified by the Commission, the Commission's staff, KBIMA or any Participating Affiliate as having access to or having been involved in providing advice to United States clients, or related transactions,⁶ at such place as the Commission may designate in the United States or, at the Commission's option, in the country where the records are kept or the personnel reside. KBIMA will authorize all personnel described in the preceding sentence to testify about all advice provided to its United States clients and related transactions (except with respect to the identity of non-United States clients). KBIMA will not (except with respect to the identity of non-United States clients) contest the validity of an administrative subpoena for testimony or documents under any laws or regulations other than those of the United States;

B. it will, to the extent that any books and records identified above are not kept in English, cause the books and records to be translated into English upon reasonable advance request by the Commission or its staff;

C. it will deem as an "associated person" each Participating Affiliate and each employee of the Participating Affiliate, including research analysts, who (i) provides advice to KBIMA's United States clients; or (ii) has access to any information concerning which securities are being recommended to KBIMA's United States clients prior to the effective dissemination of the recommendations;⁷

D. (i) it will make clear in any communications between the Dual Employees and its clients that the communications are from KBIMA, not any Participating Affiliate; (ii) when dealing with clients or potential clients of KBIMA, the Dual Employees will make it clear that they are acting in their capacity as representatives of KBIMA, not the Participating Affiliate; and (iii) KBIMA will disclose to its clients in its Form ADV that Participating Affiliates may recommend to their clients, or invest on behalf of their clients in, securities that are the subject of recommendations to, or discretionary trading on behalf of, KBIMA's clients.

Participating Affiliates:

Each Participating Affiliate represents that:

A. any advice given to United States persons will be given only through KBIMA;⁸

B. it will provide to KBIMA and KBIMA's Form ADV will disclose the names and other information required by Form ADV for all associated persons defined above;

C. it will maintain the staff trading records required by Rule 204-2(a)(12) for all "advisory representatives" of the Participating Affiliate with respect to United States clients of KBIMA; n99

D. it will keep books and records of the type described in Rules 204-2(a)(1), (2), (4), (5), and (6) and 204-2(c) for all transactions. The Participating Affiliate will also retain records of the type described in Rule 204-2(a)(3) and (7) with respect to transactions involving KBIMA's United States clients and all related transactions. All the books and records described above will be maintained and preserved in an easily accessible place in the country where the books and records are kept for a period of not less than five years from the end of the fiscal year during which the last entry was made on the book or record.

E. it will, to the extent that any books and records identified above are not kept in English, cause the books and records to be translated into English upon reasonable advance request by the Commission or its staff;

F. it will promptly, upon receipt of an administrative subpoena, demand or a request for voluntary cooperation made during a routine or special inspection or otherwise, provide to the Commission or to the Commission's staff any and all of the books and records described above, and make available for testimony before or other questioning by the Commission or the Commission's staff any and all personnel (other than clerical or ministerial personnel) identified by the Commission, the Commission's staff, KBIMA or any Participating Affiliate, as having access to or having been involved in providing advice to be used for or on behalf of KBIMA's United States clients or related transactions, at such place as the Commission may designate in the United States or, at the Commission's option, in the country where the records are kept or the personnel reside. The Participating Affiliate will authorize all personnel described in the preceding sentence to testify about all advice to be used for or on behalf of KBIMA's United States clients and related transactions (except with respect to the identity of non-United States clients). The Participating Affiliate will not (except with respect to the identity of non-United States clients) contest the validity of administrative subpoenas for testimony or documents under any laws or regulations other than those of the United States;

G. it will submit to the jurisdiction of United States courts for actions arising under the United States securities laws in connection with investment advisory activities and related securities activities arising out of or relating to any investment advisory services provided to United States clients of KBIMA, or any related transaction. Each Participating Affiliate will designate and appoint an agent for service of process upon whom may be served all process, pleadings, or other papers in (a) any investigation or administrative proceeding conducted by the Commission, and (b) any civil suit or action brought against KBIMA and/or the Participating Affiliate or to which KBIMA or the Participating Affiliate has been joined as a defendant or respondent. The agent will be authorized to receive any notice, pleading, summons, or other process in any action or other proceeding or a related subpoena arising out of or relating to any investment advisory services and related securities activities provided to United States clients of KBIMA, or any related transaction. Each Participating Affiliate will also appoint a successor agent if it or any person discharges the agent, or the agent is unwilling or unable to accept service on behalf of the Participating Affiliate at any time until six years have elapsed from the date of KBIMA's last investment advisory activity. No Participating Affiliate will have access to or will provide advice to be used for or on behalf of KBIMA's United States clients until documents effecting the appointment of an agent have been filed by the Participating Affiliate with the Commission in a form that is substantially similar to the document attached as Exhibit B to your letter dated December 2, 1993;

H. it will report to the staff of the Commission changes in the laws of its jurisdiction that would prevent the Participating Affiliate from performing the undertakings in this letter and the Participating Affiliate understands that, with respect to any such change in foreign law, the staff of the Commission reserves the right to withdraw this letter if, after discussion, KBIMA, the Participating Affiliate, and the staff are unable to agree upon a satisfactory modification of the terms of the letter.

Because this position is based on the facts and representations in your letter, you should note that any different facts or representations may require a different conclusion. Further, this response expresses the Division's position on enforcement only, and does not express any legal conclusions on the questions presented.

Kevin M. Broadwater
Attorney

Footnotes

1 Telephone conversation dated September 8, 1993 between Jessica Forbes and Kevin M. Broadwater.

2 See Section 202(a)(17) of the Advisers Act. A registered adviser is obligated to supervise the activities of associated persons. See, e.g., Sections 203(e)(5) and 204A of the Advisers Act.

3 See Mercury Asset Management plc (pub. avail. Apr. 16, 1993); Uniao de Bancos de Brasileiros S.A. (pub. avail. July 28, 1992); SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, Chapter 5, The Reach of the Investment Advisers Act of 1940 (May 1992).

4 This research may constitute "analyses or reports concerning securities" within the meaning of Section 202(a)(11) of the Advisers Act.

5 You represent that the KB Research Affiliates' reports are not distributed to United States persons, although Kleinwort Benson North America Inc., an affiliate that is registered with the Commission as a broker-dealer, does distribute this information to United States persons in reliance on Rule 15a-6 under the Securities Exchange Act of 1934. We express no view regarding whether the KB Research Affiliates would be required to register separately under the Advisers Act.

6 The Division interprets the term "related transactions" broadly.

7 Under this definition, an "associated person" of KBIMA would include: (i) the KBIM Pacific portfolio manager and the KBIM KK portfolio managers who share an office with KBIMA portfolio managers; and (ii) all dealing room personnel, if trades for KBIMA clients are placed for execution with any affiliate of KBIMA, and not just the person who places the trade.

8 KBIM may continue to advise its one existing United States client directly.

9 You state that the KBIM employees who will maintain or have access to KBIMA's records will be treated as "advisory representatives." In addition, we note that all persons deemed to be "associated persons" of KBIMA under its representation in paragraph C on page 5 of this response also would be "advisory representatives" of KBIMA.

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December 2, 1993

Thomas Harman, Esq.
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Investment Advisers Act of 1940 Sections 203 and 208

Dear Mr. Harman:

We are writing to you on behalf of our clients, Kleinwort Benson Investment Management Limited ("KBIM"), KBIM Pacific Limited ("KBIM Pacific") and Kleinwort Benson Investment Management KK

("KBIM KK"), to request your concurrence with our opinion that KBIM, KBIM Pacific and KBIM KK will not be required to register under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), if they share certain personnel with Kleinwort Benson Investment Management Americas Inc. ("KBIMA"),¹⁰ an investment adviser that is registered under the Advisers Act, under the circumstances described below.

BACKGROUND 11

KBIMA, a Delaware corporation and KBIM, a U.K. company, are both wholly owned subsidiaries of Kleinwort Benson Investment Management Holdings, Ltd. ("Holdings"), which in turn is a wholly owned subsidiary of Kleinwort Benson Group, plc ("KBG plc"), a publicly held U.K. company. Kleinwort Benson Limited ("KB Ltd"), a U.K. merchant bank, is also a wholly owned subsidiary of KBG plc. In December 1971, KB Ltd registered as an investment adviser under the Advisers Act. In 1977, KBG plc formed KBIMA for the purpose of providing investment management services to U.S. clients, including Transatlantic Fund, Inc.,¹² a registered investment company which, at that time, was KB Ltd's only U.S. investment advisory client. Accordingly, upon the registration of KBIMA and with the consent of the shareholders of Transatlantic Fund, Inc., KB Ltd assigned its investment management agreement with Transatlantic Fund, Inc. to KBIMA and subsequently withdrew its own registration under the Advisers Act.¹³

In 1977, KBG plc formed KBIM to provide investment management services to KB Ltd's non-U.S. clients, at which time KB Ltd ceased to provide investment management services to third parties. In 1986, KBG plc formed KBIM Pacific (as a subsidiary of KBIM) to provide investment management services with respect to Pacific rim securities and KBIM KK (as an indirect subsidiary of KBG plc) to provide investment management services with respect to Japanese securities. Thereafter, in January 1992, in order to consolidate its investment management operations under a single holding company, KBG plc formed Holdings as the direct parent of both KBIMA and KBIM and the indirect parent of KBIM Pacific and KBIM KK. This restructuring involved no change in the actual management or control of either KBIMA or KBIM.

ADVISORY ACTIVITIES OF KBIMA AND KBIM

The principal operating subsidiaries of Holdings engaged in the investment advisory business are KBIMA and KBIM. (KBIM also holds a banking license in England.) The offices of Holdings and KBIM are in London, England, where all of KBIM's, and some of KBIMA's, portfolio managers are located.¹⁴ KBIMA maintains an office in New York, where nine portfolio managers are located (the nine portfolio managers in New York manage U.S. fixed income portfolios and will have no involvement in the activities that are the subject of this no-action request), an office in Hong Kong, where one portfolio manager is located, and an office in Tokyo where one portfolio manager is located. KBIM KK, an indirect wholly-owned subsidiary of Holdings, maintains an office in Tokyo, where two portfolio managers are located, and KBIM Pacific, a wholly-owned subsidiary of KBIM, maintains an office in Hong Kong, where one Portfolio manager is located.

Each of KBIMA and KBIM is subject to regulation under the U.K. Financial Services Act of 1986 and the rules promulgated by the Investment Management Regulatory Organization Limited ("IMRO"). Under that Act, it is unlawful for any person (including a company) to conduct an investment management business in the U.K. unless such person is authorized or, in certain specified circumstances, exempt from regulation. IMRO is responsible for authorizing and regulating the conduct of business of persons engaged in the business of investment management. As members of IMRO, KBIM and KBIMA are subject to a comprehensive system of regulation similar to that provided under the Advisers Act. Pursuant to IMRO regulations, KBIM and KBIMA are required to keep adequate records and give IMRO access to all documentation related to investment transactions; comply with regulations concerning custody of client assets; provide periodic reports to their clients; comply with restrictions on principal transactions with clients; and comply with restrictions on advertising. KBIM and KBIMA also subject to inspection and audit by IMRO.

KBIM Pacific and KBIM KK are organized under local law and must comply with local law in transactions with local clients and, in addition, when applicable, comply with the Financial Services Act of 1986 and the rules and regulations of IMRO. It is the policy of KBG plc that all subsidiaries observe standards of practice no less exacting than those adopted in the U.K.

KBIMA is registered under the Advisers Act and most of its clients, which are primarily institutional investors such as U.S. pension funds and investment companies, are U.S. citizens and residents. KBIMA provides investment advice primarily with respect to non-U.S. securities but has recently expanded its services to include advice with respect to U.S. fixed income securities.

KBIM is not registered under the Advisers Act. Most of KBIM's current clients are U.K. residents, but KBIM also has clients located in 61 other countries. KBIM manages the pension fund of KBG plc, but does not manage any proprietary accounts of KBG plc or of any of its affiliates. KBIM currently has one client that is a U.S. citizen residing in the U.S. KBIM relies on the exemption from registration under the Advisers Act provided in Section 203(b)(3) of the Advisers Act, since KBIM has fewer than 15 U.S. clients, does not hold itself out generally to the U.S. public as an investment adviser and does not act as an investment adviser to any investment company registered under the Investment Company Act of 1940.¹⁶ KBIM's clients consist of institutions, including pension funds, mutual funds, closed-end funds and other institutional investors, as well as individuals.

KBIM Pacific and KBIM KK are not registered under the Advisers Act. KBIM Pacific provides investment management services in Pacific rim (excluding Japanese) securities to Hong Kong, U.K. and other non-U.S. investors. KBIM KK provides investment management services, primarily in Japanese securities, to Japanese, U.K. and other non-U.S. institutional investors.

As more fully discussed below, since some of the portfolio managers of KBIM, KBIM Pacific and KBIM KK have expertise in investing in particular geographic regions, KBIMA proposes to utilize the services of such persons to manage or assist in the management of international accounts of certain of KBIMA's clients. Accounts of KBIMA that invest primarily in U.S. fixed income securities will be managed exclusively by KBIMA personnel.

CURRENT AFFILIATIONS BETWEEN KBIMA, KBIM AND KB LTD

Although there are some overlaps between the managements of KBIMA, KBIM and KB Ltd, as discussed below, such overlaps do not provide KBIM or KB Ltd access to information concerning securities recommended to, or purchased or sold for, clients of KBIMA prior to the effective dissemination of such information.

Affiliations of KBIMA Board Members with Other KBG plc Affiliates

A majority of the directors of KBIMA have been and currently are comprised of persons who also serve as directors and/or officers of other KBG plc affiliates, including KBIM, but none of such directors makes specific investment decisions or recommendations on behalf of any KBG plc affiliate or any client thereof other than KBIMA.

KBIM Executive Committee

KBIM has an Executive Committee which meets weekly to review, discuss and decide corporate business strategy and policy. The Executive Committee is the body charged by the board of directors (which normally only meets quarterly) with carrying on the business of KBIM. Two of the nine Executive Committee members are directors of KBIMA and two other directors of KBIMA are invited to attend Executive Committee meetings. None of the KBIMA directors attending KBIM Executive Committee meetings has any involvement in decisions relating to specific securities transactions effected for the accounts of clients of KBIMA or KBIM.

Investment Policy Group

An investment policy group (the "Investment Policy Group") comprised of 5 directors of KBIM and chaired by Mr. Alastair Begg (who is the Chief Investment Officer of KBIM and Chief Investment Officer of KBIMA with respect to international equities) meets once a month (and more often if necessary) to discuss matters relating to overall investment strategy with respect to the management of international assets for client accounts of KBIM and KBIMA. The Investment Policy Group sets general investment policies and guidelines with respect to international securities applicable to KBIM and KBIMA based on macroeconomic analyses as well as interest rate and stock market trends. The recommendations of the Investment Policy Group relate only to geographic areas and regional sectors for a model portfolio. The Investment Policy Group does not discuss specific securities held by clients of KBIM or KBIMA, and does not make recommendations as to specific securities to be purchased or sold for accounts of clients of KBIM or KBIMA. Subsequent to each Investment Policy Group meeting, Mr. Begg briefs the KBIMA portfolio managers and each of the other members chairs a meeting of the KBIM portfolio managers whom he supervises, to interpret the impact of the broad strategy on the individual requirements of particular types of clients. KBIM's and KBIMA's portfolio managers then make investment decisions and recommendations as to specific securities based on the investment objectives and guidelines of each particular client, consistent with the general policies set by the Investment Policy Group, as interpreted by Mr. Begg and the other members of the Investment Policy Group.

Physical Separation

To date, except as described below, KBIMA has always been physically separated from KBIM and KBG plc's other subsidiaries. The only portfolio manager of KBIMA who is located in Hong Kong shares an office with a portfolio manager of KBIM Pacific. The only portfolio manager of KBIMA who is located in Tokyo shares office space with two portfolio managers of KBIM KK. However, the KBIMA, KBIM Pacific and KBIM KK portfolio managers manage their respective accounts independently of each other. KBIMA treats the KBIM Pacific and KBIM KK portfolio managers as "advisory representatives" and maintains records of every securities transaction in which they have any direct or indirect beneficial interest. In addition, KBIM Pacific and KBIM KK undertake to make available to the Commission, upon request, records of securities transactions effected for accounts which such managers have managed for KBIM Pacific and KBIM KK since they have shared office space with KBIMA personnel.

PROPOSED ACTIVITIES

Sharing of Certain Personnel and Premises

The separate personnel requirement of Richard Ellis¹⁷ has restricted KBIMA's ability to draw fully upon the expertise and talent of portfolio managers employed by KBIMA's affiliates. KBIMA's proposal, as described below, is designed to give the U.S. clients of KBIMA the benefits of the specialized expertise of portfolio managers of KBIMA's affiliates while at the same time permitting the Commission to obtain and seek enforcement action against KBIM, KBIM Pacific, KBIM KK and any other affiliate of KBIMA that provides advice to U.S. clients of KBIMA or has access to any information concerning which securities are recommended for KBIMA's clients prior to the effective dissemination of such recommendations (the "Participating Affiliates").

In light of the Commission staff's recent acknowledgment that the separate personnel requirement may work to the detriment of clients of a U.S. registered investment adviser and the staff's recommendation to modify the position taken in Richard Ellis,¹⁸ KBIMA proposes to utilize the services of certain of KBIM's, KBIM KK's and KBIM Pacific's portfolio managers (the "Dual Employees") to manage or assist in the management of the international accounts of certain of KBIMA's clients. The Dual Employees may perform a number of different roles for KBIMA clients. A Dual Employee might be responsible for managing a portion of the investments of each account of KBIMA. For example, Mr. Bradbury currently invests in Pacific rim securities on behalf of KBIMA clients and Mr. Vale invests in Pacific rim securities on behalf of KBIM Pacific clients. Mr. Vale will become a Dual Employee and rather than Mr. Bradbury and Mr. Vale both covering all Pacific rim securities, as an example, Mr. Bradbury might be responsible for all investments in Thailand and Mr. Vale might be responsible for all investments in Singapore. On

the other hand, it may remain effective for a current employee of KBIMA and a Dual Employee to continue to specialize in the same geographic region, in which event the Dual Employee might only act as a "back-up" while the KBIMA employee is on vacation or otherwise unable to conduct the day-to-day investments of KBIMA's clients. Alternatively, the KBIMA manager might remain primarily responsible for investment decisions and merely confer with the Dual Employee who specializes in the same geographic region. In addition, a Dual Employee might replace a current KBIMA employee as the primary contact person for a particular KBIMA client.

Similarly, certain portfolio managers of KBIMA might assist in the management of certain accounts of KBIM, KBIM Pacific and KBIM KK. As described above, it may be more efficient to have a KBIMA employee who specializes in a particular geographic region make investment decisions for clients of KBIMA, KBIM, KBIM Pacific and KBIM KK, and he or she may be the primary contact person for certain clients of KBIM.

The sharing of personnel by KBIMA will be accomplished by KBIMA employing the Dual Employees on a part-time basis. It is expected that approximately 10 portfolio managers of KBIM, KBIM Pacific and KBIM KK will be shared with KBIMA. As KBIMA develops its U.S. client base, the necessity for additional assistance from KBIM, KBIM Pacific and KBIM KK may arise, and other portfolio managers may become Dual Employees.

In order to facilitate communications between KBIMA and KBIM, all of the portfolio managers of KBIMA who are located in London will move into KBIM's London offices and the KBIMA portfolio managers will not necessarily have private offices within KBIM's space. The Dual Employees and other KBIMA portfolio managers will be permitted to discuss particular investment opportunities with KBIM portfolio managers in general terms but will not disclose specific investment advice and recommendations of KBIMA to any KBIM personnel.

Research

KBIMA obtains and will continue to obtain research from a wide variety of sources, including some of its affiliates, such as Kleinwort Benson Securities Limited (the "KB Research Affiliates") as described below. The research provided by the KB Research Affiliates to KBIMA consists of statistical and other factual information on non-U.S. currencies, industries and companies, advice regarding economic factors and trends, and information, advice and recommendations on specific companies and securities regularly prepared by the KB Research Affiliates for distribution to third parties. Research obtained by KBIMA from the KB Research Affiliates is not provided to KBIMA's U.S. clients by KBIMA or the KB Research Affiliates and is neither oral nor customized, but consists solely of written reports (generally provided by mail or another form of delivery which does not involve contact with the preparer) that are also provided in the ordinary course of business by the KB Research Affiliates to the generality of their clients, who consist largely of other industry professionals. Such information is only a small part of the total "mix" of information which KBIMA uses in reaching its investment decisions and recommendations. This "mix" also includes background research and analytical information received directly from brokers, banks and other financial or economic institutions not affiliated with KBIMA.

There is a "Chinese Wall" between KBIMA and the KB Research Affiliates, and in those geographic locations where KBIMA (or a Participating Affiliate) and a KB Research Affiliate both have offices, they are physically separated. The KB Research Affiliates do not have access to KBIMA's personnel and files and do not have knowledge of the portfolios of KBIMA's clients or information concerning KBIMA's investment decisions and recommendations. In addition, KBIMA portfolio managers and other KBIMA employees (including the Dual Employees) are not provided access to the analysts and other KB Research Affiliate employees or to their files. The KB Research Affiliates do not prepare research reports or other information specifically for use by KBIMA, and KBIMA is not permitted to request of any KB Research Affiliate that it prepare a research report or provide other information concerning a particular company or industry or to contact any KB Research Affiliate to obtain follow-up information about a company that is the subject of a previously distributed report.

KBIMA is solely responsible for the conduct of its investment management and advisory business, including the development and implementation of investment policy and strategy, and all investment decisions for the purchase and sale of securities for its clients' accounts and the timing thereof. Accordingly, KBIMA does not necessarily follow the recommendations provided to it by the KB Research Affiliates. Based on the foregoing, the KB Research Affiliates will not be considered Participating Affiliates solely because they provide KBIMA with research in the manner described above.

Research reports that are generated by the KB Research Affiliates may be distributed to U.S. persons by Kleinwort Benson North America Inc. ("KBNA"), a broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 (the "1934 Act"), after review and "repackaging" by KBNA. The materials distributed note that they were issued and approved by the KB Research Affiliate but that they are being distributed in the U.S. by KBNA and that U.S. persons wishing to conduct transactions in securities which are the subject of the reports should do so through KBNA. Based on SEC staff no-action positions predating the adoption of Rule 15a-6 and the Rule 15a-6 Adopting Release (Release No. 34-27017 (July 11, 1989)), the KB Research Affiliates are of the opinion that such activities do not require the registration of the KB Research Affiliates under either the 1934 Act or the Advisers Act.

Books and Records

To date, all of KBIMA's records have been kept totally separate from those of KBIM. Since KBIM has recently made major improvements in its record keeping systems, KBIMA proposes to enter into a written agreement with KBIM pursuant to which KBIM will agree to provide certain record keeping services to KBIMA. Nine employees of KBIM will be responsible for maintaining, or will have access to, records of KBIMA. Such employees will be treated as "advisory representatives" of KBIMA. The written agreement will provide that any records maintained by KBIM on behalf of KBIMA will be maintained in accordance with the requirements of Rule 204-2 under the Advisers Act, that such records are the exclusive property of KBIMA and that the staff of the Commission will be entitled to access to such records.

Trading Procedures

In order to ensure that trades effected for KBIMA's clients are effected on terms no less favorable than trades effected for KBIM's clients, subject to applicable U.S. laws (such as the Employee Retirement Income Security Act of 1974 and the Investment Company Act of 1940), trades for KBIMA's clients generally will be placed through KBIM's dealing room and could be combined with trades for KBIM's clients. KBIM dealers who place trades on behalf of KBIMA's clients will be treated as "associated persons" of KBIMA. No trades for the accounts of KBIMA's clients will be placed for execution with any affiliate of KBIMA.

In order to address the concerns of the staff expressed in the Staff Report, such as Commission "access to trading and other records of [the Participating Affiliates], and [their] personnel, to the extent necessary to monitor and police conduct that may harm United States investors," KBIMA and the Participating Affiliates make the representations set forth below.

I. Representations of KBIMA

KBIMA has authorized us to state that it represents that:

- A. it will promptly, upon receipt of an administrative subpoena, demand or a request for voluntary cooperation made during a routine or special inspection or otherwise, provide to the Commission or to the Commission's staff any and all of the books and records that it is required to keep under the Advisers Act, and make available for testimony before or other questioning by the Commission or the Commission's staff any and all personnel (other than clerical or ministerial personnel) identified by the Commission, the Commission's staff, KBIMA or any Participating Affiliate as having access to or having been involved in providing advice to United States clients, or related transactions, at such place as the Commission may designate in the United States or, at the Commission's option, in the country where the records are kept or such

personnel reside. KBIMA will authorize all personnel described in the preceding sentence to testify about all advice provided to United States clients and related transactions (except with respect to the identity of non-U.S. clients). KBIMA will not (except with respect to the identity of non-U.S. clients) contest the validity of an administrative subpoena for testimony or documents under any laws or regulations other than those of the United States;

B. it will, to the extent that any books and records identified above are not kept in English, cause such books and records to be translated into English upon reasonable advance request by the Commission or its staff;

C. it will deem as an "associated person" each Participating Affiliate and each employee of the Participating Affiliate, including research analysts, who (i) provides advice to KBIMA's U.S. clients or (ii) has access to any information concerning which securities are being recommended to KBIMA's U.S. clients prior to the effective dissemination of such recommendations.

D. (i) it will make clear in any communications between the Dual Employees and its clients that such communications are from KBIMA, not any Participating Affiliate; (ii) when dealing with clients or potential clients of KBIMA, the Dual Employees will make it clear that they are acting in their capacity as representatives of KBIMA, not any Participating Affiliate; and (iii) KBIMA will disclose to its clients in its Form ADV that Participating Affiliates may recommend to their clients, or invest on behalf of their clients in, securities that are the subject of recommendations to, or discretionary trading on behalf of, KBIMA's clients.

II. Representations of Participating Affiliates

Each Participating Affiliate has authorized us to state that it represents that:

A. any advice given to United States persons will be given only through KBIMA (except that KBIM may continue to advise its one existing U.S. client directly);

B. it will provide to KBIMA, and KBIMA's Form ADV will disclose, the names and other information required by Form ADV for all associated persons of KBIMA as described in representation I.C. above;

C. it will maintain the staff trading records required by Rule 204-2(a)(12) for all "advisory representatives" of the Participating Affiliate with respect to United States clients of KBIMA;

D. it will keep books and records of the type described in Rules 204-2(a)(1), (2), (4), (5), and (6) and 204-2(c) for all transactions. With respect to transactions involving KBIMA's U.S. clients and all related transactions, the Participating Affiliate will also retain records of the type described in Rule 204-2(a)(3) and (7). All the books and records described above will be maintained and preserved in an easily accessible place in the country where such records are kept for a period of not less than five years from the end of the fiscal year during which the last entry was made on such book or record;

E. it will, to the extent that any books and records identified above are not kept in English, cause such books and records to be translated into English upon reasonable advance request by the Commission or its staff;

F. it will promptly, upon receipt of an administrative subpoena, demand or a request for voluntary cooperation made during a routine or special inspection or otherwise, provide to the Commission or to the Commission's staff any and all of the books and records described above, and make available for testimony before or other questioning by the Commission or the Commission's staff any and all personnel (other than clerical or ministerial personnel) identified by the Commission, the Commission's staff, KBIMA or any Participating Affiliate as having access to or having been involved in providing advice to be used for or on behalf of KBIMA's

U.S. clients or related transactions, at such place as the Commission may designate in the United States or, at the Commission's option, in the country where the records are kept or such personnel reside. The Participating Affiliate will authorize all personnel described in the preceding sentence to testify about all advice to be used for or on behalf of KBIMA's U.S. clients and related transactions (except with respect to the identity of non-U.S. clients). The Participating Affiliate will not (except with respect to the identity of non-U.S. clients) contest the validity of administrative subpoenas for testimony or documents under any laws or regulations other than those of the United States;

G. it will submit to the jurisdiction of United States courts for actions arising under the United States securities laws in connection with investment advisory activities and related securities activities arising out of or relating to any investment advisory services provided to U.S. clients of KBIMA or any related transaction. Each Participating Affiliate will designate and appoint an agent for service of process upon whom may be served all process, pleadings or other papers in (a) any investigation or administrative proceeding conducted by the Commission and (b) any civil suit or action brought against KBIMA and/or the Participating Affiliate or to which KBIMA or the Participating Affiliate has been joined as a defendant or respondent. The agent will be authorized to receive any notice, pleading, summons, or other process in any action or other proceeding or a subpoena related thereto arising out of or relating to any investment advisory services and related securities activities provided to U.S. clients of KBIMA, or any related transaction. Each Participating Affiliate will also appoint a successor agent if it or any person discharges the agent, or the agent is unwilling or unable to accept service on behalf of the Participating Affiliate at any time until six years have elapsed from the date of KBIMA's last investment advisory activity. No Participating Affiliate will have access to or will provide advice to be used for or on behalf of U.S. clients of KBIMA until documents effecting the appointment of an agent have been filed by the Participating Affiliate with the Commission in a form that is substantially similar to the document attached hereto as Exhibit B; and

H. it will report to the staff of the Commission changes in the laws of its jurisdiction that would prevent the Participating Affiliate from performing the undertakings in this letter, and the Participating Affiliate understands that, with respect to any such change in foreign law, the staff of the Commission reserves the right to withdraw this letter if, after discussion, KBIMA, the Participating Affiliate and the staff are unable to agree upon a satisfactory modification of the terms of the letter.

DISCUSSION

In view of the staff's new flexible approach towards extraterritorial application of the Advisers Act, as expressed in the Staff Report, Uniao de Bancos de Brasileiros S.A. (pub. avail. July 28, 1992) and Mercury Asset Management plc (pub. avail. April 16, 1993), and in view of the undertakings described above, in particular that each Participating Affiliate undertakes to provide the Commission with access to the books and records described above, it is our view that KBIM and KBIMA's other affiliates have created a workable approach that will enable KBIMA to serve clients efficiently and effectively, and will also address the Commission staff's regulatory concerns by providing the staff with access to the relevant aspects of KBIMA's affiliates' businesses. Therefore, it is our opinion that KBIMA is sufficiently separate and distinct from KBIM and its other unregistered affiliates so that KBIM and such other affiliates need not register as investment advisers under the circumstances described in this letter.

For the reasons set forth above, we respectfully request your concurrence with our opinion that KBIM and the other Participating Affiliates are not required to register under the Advisers Act if KBIMA proceeds as described above. Should you have any questions regarding the foregoing, please telephone the undersigned at (212) 820-8180, Rachel L. Arfa at (212) 820-8109 or Jessica Forbes at (212) 820-8558.

Sincerely,

Allen I. Isaacson, P.C.

Footnotes

10 On August 11, 1993, Kleinwort Benson International Investment Limited ("KBII") transferred all of its assets and liabilities to KBIMA, a newly formed Delaware Corporation, whereupon KBIMA became the successor registrant to KBII. Accordingly, references to KBIMA in this letter include references to its predecessor, KBII, where the context so requires. The transfer of assets and liabilities from KBII to KBIMA was effected for the purpose of changing KBII from a U.K. company to a Delaware corporation, and did not involve a change in the actual control or management of the business of KBII.

11 An abridged organizational chart is attached as Exhibit A.

12 In September 1986, Kleinwort Benson Investment Strategies, a no-load open-end investment management company, became the successor registrant to Transatlantic Fund, Inc. In July 1993, all of the assets and liabilities of the Kleinwort Benson International Equity Fund (the only portfolio of Kleinwort Benson Investment Strategies) were transferred to the Centerland Kleinwort Benson International Equity Portfolio (the "Centerland Portfolio"), a series of the Centerland Fund. Boatmen's Trust Company is the manager of the Centerland Portfolio and KBIMA is the sub-adviser to the Centerland Portfolio.

13 The staff of the Securities and Exchange Commission (the "Commission") took a no-action position with respect to KB Ltd's withdrawal of registration under the Advisers Act. Kleinwort Benson Ltd. (pub. avail. Oct. 20, 1977).

14 In order to facilitate administration of compensation and benefits, personnel of KBG plc's subsidiaries worldwide, including portfolio managers, are often employed by KB Ltd or special-purpose subsidiaries and seconded to the various subsidiaries of KBG plc.

15 KBIM did not solicit this account. Rather, KBIM obtained the account by virtue of the acquisition of Grieveson, Grant and Co. ("Grieveson") by KBG plc in 1986. In connection with the acquisition, the investment management personnel of Grieveson were employed by KBIM, and most of the accounts previously managed by such persons as employees of Grieveson (including the account of the one U.S. client of KBIM) voluntarily moved their accounts to KBIM. According to the records of Grieveson, this U.S. client account had been an account of Grieveson since December 1985. Unless registered under the Advisers Act, KBIM will not solicit or accept any additional U.S. investment management or advisory clients.

16 Although Section 203(b)(3) of the Advisers Act does not expressly distinguish between U.S. clients and non-U.S. clients for purposes of determining the 15 client threshold and does not expressly limit the "public" to the U.S. public, the staff of the Commission has taken the position that "non-resident investment advisers" do not have to include non-U.S. clients in the 15 client limit and that the term "public" is limited to the U.S. public. See, e.g., Vocor International S.A. (pub. avail. Apr. 9, 1990); Murray Johnstone Ltd. (publ. avail. Apr. 17, 1987); Alexander, Holburn, Beaudin & Lang (pub. avail. Aug. 13, 1984). Moreover, the staff has made it clear that a non-resident investment adviser is not required to count the U.S. clients of its affiliate that is registered under the Advisers Act provided that the non-resident investment adviser is sufficiently separate from such affiliate. See, e.g., Hoguet, Muzinich, Keller Asset Management Co., Inc. (pub. avail. Feb. 24, 1988). Since KBIM is a U.K. company with its principal place of business in London, England, KBIM is a "non-resident investment adviser" as defined in Rule 0-2(d)(3) under the Advisers Act and since KBIM is currently operated independently of KBIMA, KBIM is not required to count the U.S. clients of KBIMA in determining that it has fewer than 15 U.S. clients.

17 (pub. avail. Sept. 17, 1981)

18 See SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, Chapter 5, The Reach of the Investment Advisers Act of 1940 (May 1992) (the "Staff Report").