MERCURY ASSET MANAGEMENT plc

Investment Advisers Act of 1940 -- Section 203(a)

April 16, 1993

TOTAL NUMBER OF LETTERS: 2

SEC-REPLY-1:
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 16, 1993

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 92-212-CC
Mercury Asset Management plc
File No. 132-3

Your letter dated April 12, 1993, requests assurance that the staff would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if Mercury Asset Management plc ("MAM") registers as an adviser under the Investment Advisers Act of 1940 (the "Advisers Act") but complies with the Advisers Act only with respect to clients who are United States persons ("United States clients"), except as described in your letter. You further request assurance that the staff would not recommend enforcement action to the Commission if certain affiliated entities of MAM and MAM's subsidiary, Warburg Investment Management International Ltd. ("WIMI"), a registered investment adviser, do not register under the Advisers Act, but provide investment advice to United States persons through MAM or WIMI.

MAM is a corporation organized under English law and is subject to regulation in the United Kingdom. MAM's principal offices are located in London. MAM is a wholly-owned subsidiary of Mercury Asset Management Group plc ("MAM Group"), a holding company that has no investment advisory operations. MAM Group affiliates engage in the investment advisory business in Japan, Australia, Canada, Hong Kong, Switzerland, Singapore, Luxembourg, Jersey, the Isle of Man, and Bermuda (the "Participating Affiliates"). You state that MAM Group requires all of its affiliates to observe standards of practice no less exacting than those required in the United Kingdom.

MAM currently is not registered under the Advisers Act and markets its services exclusively to non-United States persons. MAM proposes to register under the Advisers Act and expand its clientele to include United States persons. In advising United States clients, MAM wishes to use investment advice from the Participating Affiliates.

WIMI provides investment management services to United States persons and, in a few cases, to non-United States persons who require that their adviser observe United States regulatory standards and procedures. n1 WIMI also wishes to rely on advice from Participating Affiliates in advising United States clients.

Section 203(a) of the Advisers Act requires any investment adviser that uses the United States mails or any other means or instrumentality of interstate commerce in connection with its business as an investment adviser to register with the Commission, unless the adviser is exempted from registration. Historically, the Division has taken the position that, once registered, domestic and foreign advisers are subject to all the substantive provisions of the Advisers Act with respect to both their United States and non-United States clients.

The Division recently determined that the substantive provisions of the Advisers Act generally should not govern the relationship between an investment adviser located outside the United States and its non-United States clients, even though the adviser is registered under the Advisers Act. n2 To enable the Commission to monitor and enforce a registered foreign adviser's performance of its obligations to its United States clients and to ensure the integrity of United States markets, a registered foreign adviser must comply with certain Advisers Act recordkeeping requirements and provide the Commission access to foreign personnel with respect to all its activities. n3

Consistent with this approach, the Division also reexamined its position with respect to the organization of United States subsidiaries by foreign advisers. n4 Previously, the Division permitted foreign advisers to avoid subjecting all of their operations to the Advisers Act by forming separate and independent subsidiaries to provide advice to United States clients. n5 Under the Division's position in Richard Ellis, a subsidiary would be regarded as having a separate, independent existence and to be functioning independently of its parent, thereby permitting the parent to remain unregistered, if it met certain conditions. These conditions arguably ensured that the parent company was not indirectly engaged in activities that would require it to register under the Advisers Act. n6

Although Richard Ellis involved a parent-subsidiary relationship, the same concerns that led the Division to develop the Richard Ellis conditions are present in the case of sister companies under common control. n7 Accordingly, when the Participating Affiliates provide investment advice to United States clients through MAM and WIMI, they will be engaging in activities that will make them investment advisers under the Advisers Act. As a result, the Participating Affiliates normally would have to register under the Advisers Act.

In recognition of the internationalization of the securities markets and the desire of United States investors for investment management advice regarding foreign markets, the Division now takes the position that affiliated companies are separate 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 "associated persons" of the registrant; n8 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. n9

MAM's and WIMI's proposal to rely on the advice of investment managers of Participating Affiliates and other information developed by Participating Affiliates for use in connection with investment advisory services to United States clients under the conditions set forth below is consistent with this approach. The Participating Affiliates have agreed to afford the Commission access to their trading and other records, and to their personnel, to the extent necessary for the Commission to monitor and police conduct that may harm United States persons or markets.

Mercury Asset Management

On the basis of the facts and representations in your letter, and without necessarily agreeing with your legal analysis, we would not recommend that the Commission take any enforcement action if MAM registers as an adviser under the Advisers Act, but complies with the Advisers Act only with respect to clients who are United States persons and not with respect to clients who are not United States persons, except as stated in your letter and set forth below. n10 Our position is based, in particular, on your representations that:

1) MAM will comply in all respects with all the requirements of the Advisers Act with respect to its United States clients.

2) MAM will comply in all respects with the recordkeeping requirements of the Advisers Act and Rule 204-2 thereunder with respect to all its clients.

3) MAM will promptly provide to the Commission or the Commission's staff upon receipt of an

administrative subpoena, demand, or a request for voluntary cooperation made during a routine or special inspection or otherwise, any and all books and records that Rule 204-2 requires it to keep.

4) MAM will promptly make available for testimony before, or other questioning by, the Commission or the Commission's staff, upon receipt of an administrative subpoena, demand, or a request for voluntary cooperation made during a routine or special inspection or otherwise, any and all of its personnel, with the exception of clerical or ministerial personnel.

5) MAM will list on its Form ADV all directors of MAM and each investment manager of MAM (whether or not also a director of MAM) who provides advice to United States clients.

6) MAM will not hold itself out to non-United States clients as being registered under the Advisers Act. Where communications are sent to both United States and non-United States clients, (i) separate communications will be sent, (ii) references to MAM's registration under the Advisers Act will be deleted in communications with non-United States clients, or (iii) the communication with non-United States clients will make clear that MAM or the subdivision of MAM will be complying with the Advisers Act only with respect to United States clients.

The Participating Affiliates of MAM and WIMI

We further would not recommend that the Commission take any enforcement action if Participating Affiliates of MAM and WIMI provide investment advice to United States persons through MAM and WIMI without registering under the Advisers Act, under the conditions described in your letter. Our position is based, in particular, on your representations that:

1) Any advice given to United States persons from Participating Affiliates will be given through MAM or WIMI.

2) The ADV forms that MAM and WIMI file will disclose the names of all individuals and Participating Affiliates involved in generating investment advice to be used for or on behalf of United States clients and the required biographical and ownership information for all such individuals and Participating Affiliates.

3) The Participating Affiliates and all employees of Participating Affiliates, including research analysts, whose functions or duties relate to the determination of recommendations that MAM or WIMI make to their United States clients, will be deemed to be "associated persons" of MAM and WIMI. n11

4) The Participating Affiliates 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 United States clients and all related transactions, n12 the Participating Affiliates also will retain records of the type described in Rule 204-2(a)(3) and (7). Participating Affiliates will also maintain the staff trading records required by Rule 204-2(a)(12) for all "advisory representatives" of the Participating Affiliate who are involved in giving advice to United States clients. n13 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. To the extent that any books and records are not kept in English, the Participating Affiliate will cause such books and records to be translated into English upon reasonable advance request by the Commission or the Commission's staff.

5) The Participating Affiliate 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 in paragraph 4 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, MAM, WIMI or any

Participating Affiliate as having been involved in giving 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. Participating Affiliates will authorize all personnel described in the preceding sentence to testify about all advice given to United States clients and any related transactions (except with respect to the identity of non-United States clients). Participating Affiliates 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.

6) Each Participating Affiliate (i) will submit to the jurisdiction of United States courts for actions arising under the United States securities laws in connection with investment advisory activities for United States clients of MAM or WIMI, and (ii) will 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 MAM or WIMI and/or the Participating Affiliate or to which MAM or WIMI or the Participating Affiliate has been joined as defendant or respondent, in connection with the investment advisory activities and related securities activities arising out of or relating to any investment advisory services provided to United States clients or any related transaction. Each Participating Affiliate will also appoint a successor agent if the Participating Affiliate 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 the last MAM or WIMI investment advisory activity. No Participating Affiliate will provide investment advice to United States clients through MAM or WIMI until documents effecting the appointment of an agent have been filed by the Participating Affiliate with the Commission in the form of Exhibit A attached to your letter of April 12, 1993.

Conclusion

Our positions are based particularly on the representations and undertakings set forth above. Because these positions are 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 action only, and does not purport to express any legal conclusions on the questions presented.

Heidi Stam
Assistant Chief Counsel

Footnotes

n1 Where the context requires, references to WIMI refer also to its wholly owned subsidiary, Warburg Investment Management International (Jersey) Ltd., which is also registered under the Advisers Act.

n2 The National Mutual Group (pub. avail. Mar. 8, 1993) ("National Mutual"); Uniao de Bancos de Brasileiros S.A. (pub. avail. July 28, 1992) ("Unibanco"); 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).

n3 See National Mutual, Unibanco, supra.

n4 See Unibanco, supra.

n5 Richard Ellis (pub. avail. Sept. 17, 1981). The Richard Ellis conditions required the subsidiary to: (1) be adequately capitalized; (2) have a buffer between the subsidiary's personnel and the parent, such as a board of directors a majority of whose members are independent of the parent; (3) have employees, officers and directors, who if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent; (4) make the

decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and have and use sources of investment information not limited to its parent; and (5) keep its investment advice confidential until communicated to its clients.

n6 See Sections 203 and 208(d) of the Advisers Act. Section 208(d) provides that it shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing that it would be unlawful for such person to do directly under the Advisers Act.

n7 See, e.g., Investment Advisers Act Rel. No. 353 (Dec. 18, 1972), 38 FR 1649 (proposed rule for determining whether affiliates of registered advisers also had to register under the Advisers Act) (withdrawn without explanation in Investment Advisers Act Rel. No. 497 (Feb. 19, 1976), 41 FR 8498); Prudential-Bache Special Situations Fund (pub. avail. Sept. 6, 1984) (companies affiliated with a registered investment adviser that are not operated separately from the registrant and use its name, should be regulated under the Advisers Act); Davis, Skaggs & Co., Inc. (pub. avail. Aug. 21, 1981) (affiliate of registered adviser did not have to register under the Advisers Act where it was operated separately from the registered adviser in terms of financing, sources of information, and personnel). Compare TAC America, Ltd. (pub. avail. July 25, 1984) and Double D Management Ltd. (pub. avail. Jan. 31, 1983) (unregistered foreign affiliates of registered foreign advisers permitted to charge non-United States clients performance fees prohibited by the Advisers Act).

n8 See Section 202(a)(17) of the Advisers Act.

n9 See Unibanco, supra. Commission access to trading and other records of an unregistered affiliate also is appropriate where the unregistered adviser and its registered sister company share key advisory personnel, even where the unregistered affiliate is not involved in United States advisory activities. This approach is consistent with the Division's position in Unibanco. In TAC America and Double D Management, supra, the registered foreign advisers and their affiliates shared key advisory personnel. Those letters focused on the limited issue of whether the unregistered advisers could charge performance fees to non-United States clients. The no-action responses did not specifically discuss, nor did the requests address, how advisory services performed by the shared employees on behalf of the unregistered adviser might harm the United States clients of the registered affiliate. Accordingly, the scope of TAC America and Double D Management is limited to the performance fee issues specifically addressed in those letters. Commission access to the trading records of the unregistered adviser and shared employees is necessary to ensure that the registered entity is not committing, indirectly through the affiliate, acts that it could not do directly under the Advisers Act and that may harm its United States clients. See Section 208(d).

n10 The staff will look to the definition of United States person in paragraph 902(o) of Regulation S under the Securities Act of 1933 for guidance in interpreting the meaning of United States person in this no-action response, although we do not consider the Regulation S definition binding in all circumstances. For the purposes of this response, United States person includes members of identifiable groups of United States citizens abroad, such as members of the United States armed forces serving overseas.

n11 See Section 202(a)(17) of the Advisers Act. MAM and WIMI are obligated to monitor the activities of associated persons. See, e.g., Sections 203(e)(5) and 204A of the Advisers Act.

n12 The Division interprets "related transactions" broadly.

n13 The term "advisory representative" is defined in Rule 204-2(a)(12)(A).

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April 12, 1993

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
Washington, D.C. 20549

Re: Compliance With the Investment Advisers Act of 1940 By Mercury Asset Management Plc With Respect to Clients That Are U.S. Persons Only

Dear Sirs:

This is to request your confirmation that the Staff of the Division of Investment Management (the "Staff") will not recommend that the Securities and Exchange Commission (the "Commission" or "SEC") take any enforcement action against Mercury Asset Management plc ("MAM") if MAM registers as an adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act") but complies with the Advisers Act only with respect to clients that are residents of the United States ("U.S. Persons" or "U.S. clients") and not with respect to clients that are not U.S. Persons (referred to herein as "non-U.S. Persons" or "non-U.S. clients"), except as otherwise described in this letter. We also request your assurance that the Staff will not recommend that the Commission take any enforcement action against any Participating Affiliate (as defined herein) if, under the conditions described in this letter, MAM and Warburg Investment Management International Ltd. ("WIMI"), a wholly-owned subsidiary of MAM, obtain investment advice from the Participating Affiliate that will be the basis for advice given to U.S. clients.

MAM Group

Mercury Asset Management Group plc ("MAM Group") is an English public limited company listed on the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (the "London Stock Exchange"), of which 25% is owned by the public and 75% is owned by S.G. Warburg Group plc, an English public limited company, also listed on the London Stock Exchange, which is engaged through subsidiaries in the provision of banking, securities and asset management services. MAM Group is a holding company and has no investment advisory operations.

The principal operating subsidiaries of MAM Group engaged in the investment advisory business are MAM (which is a wholly-owned subsidiary of MAM Group) and WIMI. The principal offices of MAM Group, MAM and WIMI are in London, England, where all of MAM's and WIMI's fund managers are located. WIMI also maintains a small representative office in New York City for marketing purposes. Other wholly or partially-owned affiliates of MAM Group, some of which employ fund managers with specialized expertise in their respective markets, carry on investment advisory businesses in Japan, Australia, Canada, Hong Kong, Switzerland, Singapore, Luxembourg, Jersey, the Isle of Man and Bermuda. Each of MAM and WIMI are corporations organized under English law and are subject to regulation under the U.K. Financial Services Act 1986 (the "Financial Services Act") and the rules promulgated by the Investment Management Regulatory Organization Limited ("IMRO") (together with the Financial Services Act, "U.K. Regulations"), the U.K. self-regulating organization for the investment management industry of which MAM and WIMI are members. The other affiliates of MAM Group that employ fund managers and carry on investment advisory businesses are organized under local law and must comply with local law in transactions with local clients and, in addition, comply with the Financial Services Act and IMRO when

dealing with clients of MAM and WIMI. It is the policy of MAM Group that all such subsidiaries observe standards of practice no less exacting than those adopted in the United Kingdom. For purposes of centralized management of employment terms, compensation and benefits, all MAM and WIMI personnel, including fund managers, are employed by a special-purpose subsidiary of MAM Group and seconded to MAM and WIMI. * Personnel employed by other subsidiaries of MAM Group outside the United Kingdom are employed by the relevant subsidiary on substantially the same contractual terms as employees of MAM Group in the United Kingdom (other than as required by the provisions of local law) and are required under their employment contracts to comply with all relevant MAM Group compliance requirements.

> ** This subsidiary, Mercury Asset Management Holdings Ltd., was formed for administrative convenience and is not a controlling entity of MAM or WIMI.*

WIMI is registered under the Advisers Act and conducts its advisory business exclusively with clients who are in the United States and clients outside the United States who are either U.S. Persons or, in a few cases, non-U.S. Persons who require that their adviser observe U.S. regulatory standards and procedures. WIMI currently manages approximately $ 2.1 billion of client funds. Its clients are primarily institutional investors such as U.S. pension funds or investment companies registered under the Investment Company Act of 1940. Currently, WIMI has very few private clients but is planning to expand its private client base in the future. **

> *** Where the context requires, references to WIMI include its wholly-owned subsidiary Warburg Investment Management International (Jersey) Ltd.*

MAM is currently not registered under the Advisers Act and markets its services exclusively to clients in the United Kingdom and elsewhere outside the United States, principally to institutional investors. MAM also advises non-U.S. investment companies, units of which are offered and sold outside the United States to non-U.S. Persons. As of September 30, 1992 MAM Group and its subsidiaries, other than WIMI, in aggregate managed in excess of $ 70 billion in client funds.

Background

In recent years, a growing number of U.S. investors, particularly large pension funds, have allocated a portion or an increased portion of their portfolios to securities issued by companies and governments outside North America, particularly in the United Kingdom, continental Europe and Japan. A number of U.K.-based advisers, including those in the MAM Group, have long-established expertise in portfolio management of securities in markets outside the United States. In order to market their services to U.S. clients * and meet the requirements of ERISA funds and other institutional investors for diversification into markets outside the United States, a number of U.K.-based advisers have registered either themselves or a special purpose subsidiary, or both under the Advisers Act. In 1977 MAM formed and registered a wholly-owned subsidiary, WIMI, which in 1983 formed and registered another subsidiary, Warburg Investment Management International (Jersey) Ltd. ("WIMI (Jersey)"). ** In some cases, such as that of WIMI, the registered subsidiary was formed to operate independently of its investment advisory affiliates under the guidelines contained in the Richard Ellis no-action letter discussed below (the "Richard Ellis guidelines"). In the case of certain other advisers, the corporate parent or another affiliate provides investment advice through the subsidiary and also is registered.

> ** Section 203(b)(3) of the Advisers Act provides an exemption from registration for advisers having fewer than fifteen clients, but this exemption is not available for an adviser who "holds himself out generally to the public as an investment adviser" of acts as an investment adviser to a registered investment company.*

> *** For convenience, references in this letter to MAM Group, MAM, WIMI and WIMI (Jersey) ignore historical changes in company name and structure.*

The Problem

The establishment of a separate registered subsidiary under the Richard Ellis guidelines, without registration of the parent company, was designed to enable U.K.-based advisers to comply with the Advisers Act in serving the small minority of their clients who were U.S. Persons *** while permitting the parent to continue to operate in a manner consistent with U.K. custom and regulation with respect to its non-U.S. clients. This solution, however, had been made increasingly difficult by the Staff's interpretation of Section 208(d) of the Advisers Act, which prohibits a person from doing indirectly anything which it would be unlawful for that person to do directly under the Advisers Act or the rules promulgated thereunder (the "Rules"). In Release No. IA-353 (December 18, 1972), the Commission stated that the corporate parent of a registered adviser would be required to register if:
"all or substantially all of the duties and functions relating to the rendering of investment advice undertaken to be performed by a registered investment adviser are in fact performed by the person controlling the registered adviser or an affiliate of such controlling person, or key advisory personnel of the registered investment adviser are also personnel of the controlling person."

> **** For example, companies within the MAM Group (other than WIMI) currently manage more than 25 times the amount of client funds managed by WIMI.*

The Staff later expanded on this position in Richard Ellis, Inc., SEC No-Action Letter (September 17, 1981), stating that a parent would not be required to register under the Advisers Act so long as its registered subsidiary:

> . . . (1) is adequately capitalized, (2) has a buffer, such as a board of directors a majority of whose members are independent of the parent, between the subsidiary's personnel and the parent, (3) has employees, officers and directors who, if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent, (4) itself makes the decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and has and uses sources of investment information not limited to the parent, and (5) keeps its investment advice confidential until communicated to its clients.

The separation of operations required by the Richard Ellis guidelines can have several significant disadvantages from the point of view of U.S. clients. First, the parent can be unable to employ its most talented portfolio managers on U.S. accounts, since they may be required to bring their specialized expertise to bear on the much larger proportion of the business represented by non-U.S. accounts served by the parent. Thus, it can occur that specific personnel requested by a U.S. client to work on its account could not be made available because of the Richard Ellis guidelines.

Second, while the portfolio managers working in the registered subsidiary have the benefit of research materials generated by the parent, and may participate in some circumstances in discussions concerning currency trends and allocation of portfolios among industries and national markets, the Richard Ellis guidelines nonetheless may be understood to intend that they be distanced from the day-to-day decisions made by the parent's portfolio managers as to stock selection and the timing of transactions. The result, particularly where the number of U.S. accounts and therefore the size of the registered subsidiary is small, could be to impede the subsidiary's efforts to produce the best performance for U.S. clients.

Finally, the need to hire additional highly-paid advisory personnel dedicated solely to the registered subsidiary is cumbersome, expensive and inefficient, which cannot work to the benefit of U.S. clients. For example, if U.S. clients desire specialized expertise in Pacific rim markets, the Richard Ellis guidelines may be understood to prohibit a MAM manager with available time from advising such clients, absent special arrangements. Instead, WIMI would be rehired to hire an additional fund manager with the necessary expertise and apportion the costs associated with that manager to the U.S. clients requiring that manager's services. Because WIMI's clients would not need the services of the new manager on a full-time basis, the costs of Pacific rim market advice to U.S. clients would be substantially higher than the costs of similar advice provided to MAM clients. These problems are particularly acute where the registered subsidiary has a small number of U.S. clients, but the experience of MAM and WIMI

indicates that the problem does not recede as the subsidiary grows larger, because there is always specialized expertise within the group which is in demand by U.S. clients. In addition, where the registered subsidiary's operation is small in relation to that of its parent, it is difficult for the subsidiary to attract and keep top-quality managers (even when offering premium compensation) because such managers are highly sought after and typically prefer to work in organizations where their expertise will be fully utilized and their career path will not be limited by segregation in one subsidiary.

An alternative arrangement, which has been adopted by some U.K.-based advisers that have a U.S. client base which is too small to justify an independently-staffed subsidiary under the Richard Ellis guidelines, is to register the parent or other affiliate which participates in generating the subsidiary's investment advice. This alternative has raised a question whether the affiliate must comply with the provisions of the Advisers Act and the Rules governing relationships with clients (the "client relationship rules") in dealing with its non-U.S. clients outside the United States. The Division of Investment Management has, however, in a recent no-action letter, taken the position, based on certain specific undertakings made by the requesting party and the Division's understanding of Brazilian law, that a banking parent of a foreign registered adviser did not need to register under the Advisers Act. Uniao de Bancos de Brasileiros S.A., SEC No-Action Letter (July 28, 1992).

MAM and WIMI have always recognized that the requirements of all provisions of the Advisers Act and Rules, including the client relationship rules (such as the brochure rule, record-keeping and custody requirements, and limitations on advertising, referral fees and performance-related fees), must apply to all of their relationships with U.S. clients. It is also generally accepted that the general anti-fraud provisions of Section 206 of the Advisers Act, and the Staff's interpretations of that Section, apply to all U.S. client relationships.

However, in Reavis & McGrath, SEC No-Action Letter (Oct. 29, 1986), and again in Gim-Seong Seow, SEC No-Action Letter (Nov. 30, 1987), the Division of Investment Management has take the position that the provisions of the Advisers Act and Rules apply to non-U.S. clients as well as U.S. clients of a U.S. resident registered adviser and has expressed doubt that the Advisers Act is limited in its jurisdictional application as are other federal securities laws. * The Gim-Seong Seow letter also states the Division's view (although the question was not presented) that even a foreign adviser (such as WIMI) registered under the Advisers Act must comply with all provisions of the Advisers Act and Rules, including the client-relationship rules, with respect to its non-U.S. clients.

> ** See Reavis & McGrath for a list of the contexts in which the federal securities laws have not been applied beyond the jurisdiction of the United States or have been so applied only in limited circumstances involving fraud. Included in the list are Section 30(b) of the Securities Exchange Act of 1934, which provides that that statute shall not apply "to any person insofar as he transacts a business in securities without the jurisdiction of the United States" and Securities Act Release No. 33-4708, which interprets the registration requirements of the Securities Act of 1933 to be inapplicable to public offerings by U.S. Persons outside the United States (Release No. 33-4708 has been replaced by Regulation S).*

Many of the client relationship rules under the Advisers Act, such as the brochure rule, limits on fee structures and restrictions on trading with affiliates, are either different from or clearly exceed the restrictions placed on U.K.-based advisers by custom and regulation in London and elsewhere outside the United States, and are often contrary to the best practice in foreign markets. For example, the receipt of Form ADV by non-U.S. clients (who are generally unfamiliar with the Form) will likely elicit confusion on the part of recipients as to the reason they are receiving the Form, the purpose of the Form and the interpretation of the Form. At best, non-U.S. clients will simply view the Form ADV as irrelevant to their concerns and a waste of time and effort. Another example is the prohibition in Section 206(3) of the Advisers Act (as interpreted by the Staff) on purchasing securities from an affiliate (whether acting as an underwriter in the primary market or as a marketmaker in the secondary market) unless prior consent is obtained from the client for each transaction. This is more restrictive than the requirement under U.K. Regulations applicable to U.K.-based advisers, which permits these transactions, for certain types of customers, under a blanket consent from the client contained in a customer's agreement. * Where such consent has been obtained, the adviser's failure or inability because of U.S. regulatory constraints) to accept favorable quotations from an affiliated marketmaker could be a breach

of the adviser's obligation under U.K. Regulations to provide suitable advice and best execution. Similarly, where such consent has been obtained, an adviser's inability during a U.K. public offering to accept scarce, newly-issued securities from an affiliated underwriter at the favorable public offering price could be contrary to its obligations under U.K. Regulations. ** A final example is the limitation on performance fee arrangements set forth in Section 205(1) of the Advisers Act and Rule 205-3. By contrast, U.K. Regulations permit substantial flexibility on fee structures (including a wide range of performance fee arrangements and small percentage overrides on brokerage charges), provided that full disclosure is made of all compensation arrangements to the adviser and related parties and prior consent of the client is obtained. ***

> ** Any such transaction with an affiliate, whether acting as agent or principal, must, under U.K. Regulations, be disclosed in the contract note for that transaction sent to the client together with the amount of commission earned or, if the affiliate acted as a principal, the amount of any markup or markdown from the best execution. Institutional clients and non-U.K. resident private clients may waive their entitlements to receive contract notes.*
>
> *** If the adviser's failure to purchase the securities is due to a prohibition imposed by contract or by law it is not considered a breach of U.K. Regulations.*
>
> **** Actual amounts charged must be disclosed in a contract note delivered to the client after each transaction and must be aggregated or repeated on the client's periodic report. Institutional clients and non-U.K. resident private clients may waive their entitlements to receive contract notes and periodic reports.*

Compliance with the client relationship rules under the Advisers Act with respect to non-U.S. clients also imposes a competitive disadvantage on registered advisers compared to other unregistered, U.K.-based advisers seeking such clients, largely as a result of limits on compensation arrangements, restrictions on dealing in securities with affiliates and investor concerns relating to regulation and inspection of their accounts by a U.S. government agency.

U.K.-based investment advisers who wish to use their expertise in international securities to serve U.S. clients are therefore caught in a dilemma: either they must operate a separate adviser to serve U.S. clients under she Richard Ellis guidelines and accept the extra expense and the inequality of treatment of U.S. clients inherent in that course, or they must register their entire U.K. and international advisory operations and, in accordance with the Staff's view as expressed in the Gim-Seong Seow letter, comply at great expense and to serious competitive disadvantage with the Advisers Act and the Rules in all their dealings outside the United States with non-U.S. Persons, however inappropriate.

Discussion

Three principal considerations argue for a review of Staff positions in this area, at least as they relate to U.K.-based advisers who are members of IMRO: (1) U.S. institutional investors desire to invest outside the United States in order to diversify their portfolios and should receive the best available advice in doing so; (2) U.K.-based advisers are required under the Financial Services Act to obtain authorization to carry on investment business normally through membership of IMRO, which has established a comprehensive regulatory structure that fully protects she interests of non-U.S. clients of MAM Group; and (3) non-U.S. Persons, who constitute the great majority of MAM Group's clients (both in numbers and amounts under management), do not in general desire the protection of the Advisers Act and do not have any expectation of such protection when they enter into contracts with companies in the MAM Group. The latter two of these considerations are discussed under the next two subheadings.

IMRO Regulation. * All persons carrying on investment business in the United Kingdom are required to be authorized to carry on such business pursuant to the Financial Services Act. WIMI and MAM are so authorized by reason of their membership in IMRO. The IMRO rules establish a regulatory regime for investment managers and advisers which in some respects goes beyond the SEC's regulation under the Advisers Act. In particular, the IMRO rules codify the basic duties owed by an agent to his principal, including the obligation to disclose any material relationships and conflicts of interest, the obligation to

provide best execution and suitable advice, the obligation to give priority to customer orders, restrictions on dealing as principal and on acting as agent for both the customer and a counterparty, and the obligation to disclose any remuneration to the adviser by other parties. The IMRO rules also specifically address churning, the allocation of collective transactions among customers and recommendation of securities that are being stabilized. The "suitability" rule includes detailed provisions requiring an adviser to recommend only those investments which it believes are suitable for the client and the risks of which the client understands.

** The discussion and interpretation of IMRO regulations in this letter is based on advice of the MAM Group Compliance Officer who specializes in IMRO regulation.*

The IMRO rules include extensive regulation of customer agreements, mandating, in most circumstances, the inclusion of provisions concerning disclosure of conflicts of interest, customer investment guidelines and restrictions, periodic reports, restrictions on margin transactions (if relevant), description of compensation arrangements, description of the IMRO complaints procedure and customer rights to compensation in the event of the adviser's inability to meet liabilities to its customers, provisions governing options and futures transactions (if relevant), specific authorization if the adviser is permitted to effect transactions which may involve a conflict of interest (including a description of such conflicts) and provisions as to custody of client assets (if relevant).

As members of IMRO, MAM and WIMI * are subject to detailed financial requirements, including rules governing maintenance of accounting and staff trading records, audits and the form of financial statements, as well as strict capital adequacy requirements based on the higher of £ 5,000 or a percentage of annual expenditures. The rules also include provisions concerning (where relevant) segregation and safekeeping of customer funds and securities, including accounting requirements and restrictions on eligible custodians.

** WIMI (Jersey) is not a member of IMRO.*

IMRO has a continuing duty to determine whether its members remain "fit and proper" persons to carry on their investment advisory business. Accordingly, IMRO is empowered to obtain information from its members, to conduct inspections of the conduct of its members' business (including unannounced spot checks), to exercise powers of intervention as a means of preventing violations of the rules and to refer potential violations of the rules either to a summary procedure or to a full Membership Tribunal for appropriate action. Failure to comply with these rules and procedures would expose the member to sanctions including possible loss of authorization under the Financial Services Act to give investment advice.

In addition, the IMRO rules require each IMRO member to provide IMRO on an annual basis (or more frequently if deemed necessary by IMRO) with a written statement of representation in the form prescribed giving details of its compliance procedures and records throughout the year. The representation must be approved by the Board of Directors of the IMRO member and signed by the Chief Executive and the Compliance Officer of the IMRO member.

Finally, IMRO members are required to participate in an industry-wide scheme for the compensation of any private investors incurring damages as a result of a breach of the rules.

Unlike the SEC, IMRO has strictly limited the jurisdictional application of its rules where an IMRO member is based outside the United Kingdom. Although non-U.K. advisers with U.K. clients are required to obtain authorization to carry on investment business in the United Kingdom and, therefore, normally become IMRO members, and to submit to IMRO rules concerning discipline and capital adequacy, IMRO specifically addresses the question of conflicts of laws in situations where foreign regulation will apply by "disapplying" virtually all of its rules dealing with conduct of business, customer agreements and advertising (in effect, all of the IMRO client relationship rules) with respect to the non-U.K. clients. This "disapplication" of the rules applies to non-U.K. clients so long as the adviser's investment advice or other investment business is conducted from an office outside the United Kingdom. * In contrast, the

Staff has taken the position that both U.S. based and non-U.S.-based advisers registered under the Advisers Act must comply with the Advisers Act and the Rules as to all of their foreign clients.

> ** Because MAM will be providing advice and conducting business from an office in the United Kingdom its relationship with its clients, including U.S. clients, will be governed by U.K. Regulations. In addition, advice from non-registered MAM affiliates to MAM clients, including U.S. clients, will be governed by U.K. Regulations as the advice will be given through MAM or WIMI - i.e., on behalf of an IMRO-regulated adviser.*

Expectations of MAM's Non-U.S. Clients. The Gim-Seong-Seow letter takes the position that a United States resident investment adviser that uses U.S. jurisdictional means to solicit and provide investment advisory services exclusively to foreign clients would be required to register under the Advisers Act. Although the question was not presented, the Staff also stated, without discussion, that "all United States registered advisers (domestic and foreign) are subject to the relevant substantive provisions of the Advisers Act with respect to both United States and non-United States clients." (Emphasis supplied.) The Gim-Seong-Seow letter also recognizes that in appropriate cases the Staff may distinguish between foreign and domestic advisers in applying the substantive provisions of the Advisers Act and Rules (see the discussion of other no-action letters in Gim-Seong-Seow.) Prior to the Gim-Seong-Seow letter, the only no-action letter of which we are aware which addresses the appropriateness of full compliance with the client relationship rules under the Advisers Act for a foreign-based adviser is Nikko Securities Investment Trust & Management Company, SEC No-Action Letter (May 17, 1985) ("Nikko"), in which the Staff took the position that, in the limited circumstances described therein, Nikko could register under the Advisers Act and act as sub-adviser to a U.S. investment company while continuing to receive performance-based fees from Japanese clients in Japan and omitting to deliver Form ADV to Japanese clients. More recently, in Uniao de Bancos de Brasileiros S.A., the Division of Investment Management stated that it would not recommend enforcement action to the Commission if, based on certain undertakings set forth therein, a registered foreign advisory subsidiary of a Brazilian banking parent provides investment advisory services to its non-United States clients solely in accordance with Brazilian securities laws (or other applicable law) without complying with the provisions of the Advisers Act with respect to its non-United States advisory activities.

Gim-Seong-Seow is distinguishable from MAM's circumstances because that letter involved a U.S. resident adviser. Accordingly, in that case the Staff took the view that a U.S. resident adviser serving exclusively foreign clients should register under and comply with the Advisers Act on the following grounds: (i) it was appropriate for the SEC to regulate citizens or residents of the United States even as to their business outside the United States, ii) foreigners had a reasonable expectation that an investment adviser based in the United States would be subject to U.S. regulation, (iii) not requiring U.S. resident advisers with exclusively foreign clients to register would create a competitive disadvantage for other domestic advisers registered under the Advisers Act and (iv) regulation of such advisers was required to serve the anti-fraud purposes of the Advisers Act.

All four of these grounds are either inapplicable or greatly diminished in force in the case of U.K.-based advisers. First, these advisers are based in the United Kingdom, which has the primary interest in regulating them and has provided a comprehensive regulatory scheme under the IMRO rules. Second, non-U.S. clients of a U.K.-based adviser, such as MAM, have no reasonable expectation that they will be protected by U.S. regulation and, indeed, undoubtedly expect that they will receive the protections available under U.K. Regulations or the rules of their own jurisdiction. Third, imposing the client relationship rules under the Advisers Act upon all clients of U.K.-based advisers who advise any U.S. clients would create a competitive disadvantage for these advisers compared with other U.K.-based advisers and would create a disincentive to obtaining any U.S. clients. Finally, the anti-fraud provisions of the Advisers Act and the other U.S. securities laws are primarily designed to protect U.S. citizens and residents rather than the non-U.S. clients of MAM, who may safely be left to the comprehensive protection afforded by U.K. Regulations, except to the extent that they invest in the U.S. securities markets.

MAM Group's Proposal

Rationale. MAM Group's proposal, as more fully described below, is designed to give all of the U.S. clients of MAM and WIMI the benefits of the specialized expertise of MAM Group's fund managers while at the same time (a) permitting MAM to serve its non-U.S. clients without compliance with the Advisers Act and thus permitting MAM to comply with all U.K. Regulations applicable to its non-U.S. clients, (b) continuing to afford U.S. clients their rights under the Advisers Act, the ability to seek remedies against MAM and WIMI and any affiliates that provide advice to U.S. clients through MAM or WIMI ("Participating Affiliates") and full disclosure concerning the relevant individual fund managers and (c) ensuring that the SEC would retain its ability to obtain records and seek enforcement action against MAM, WIMI and Participating Affiliates.

Proposal. MAM Group proposes that MAM register under the Advisers Act and advise U.S. clients in addition to non-U.S. clients. * All fund managers of MAM who advise U.S. clients will comply with the Advisers Act with respect to U.S. clients and will comply with U.K. Regulations with respect to non-U.S. clients. Both MAM and WIMI will rely, in part, on Participating Affiliates in advising U.S. clients. MAM Group proposes that the following conditions apply to the arrangements:

> ** MAM may continue to advise its U.S. clients through its U.S. registered subsidiary, WIMI, but will not necessarily do so.*

1. Subcommittee of the Board of Directors. MAM will have a subcommittee of its Board of Directors which will be responsible for developing and monitoring policies and procedures to ensure that investment advice to U.S. clients meets the highest professional standards and that all transactions with U.S. clients comply with all U.S. laws and regulations, including the Advisers Act, ERISA and applicable state law. The subcommittee will meet at least semiannually and will report to the full Board at least annually. As required by Form ADV, all directors of MAM will be listed on its Form ADV.

2. Fund Managers. Inside directors of MAM will continue to be directly responsible for client relationships, overall management of each client portfolio and U.S. and U.K. regulatory compliance. Each fund manager of MAM (whether or not also a director of MAM) who provides advice to U.S. clients will be listed on MAM's Form ADV. In addition, because it may be appropriate for fund managers of MAM affiliates to provide advice to U.S. clients where a particular specialization is relevant, * these fund managers of Participating Affiliates will also be listed on MAM's Form ADV. Any advice given to U.S. Persons from Participating Affiliates will be given through MAM or WIMI. All Participating Affiliates and all employees of Participating Affiliates, including research analysts, whose functions or duties relate to the determination of recommendations that MAM or WIMI make to their U.S. clients, will be deemed to be "associated persons" of MAM and WIMI. MAM, WIMI and MAM affiliates that are expected to become Participating Affiliates currently employ over 130 fund managers and it is expected that approximately 30 of these fund managers will provide advice to U.S. clients and will be listed on MAM's Form ADV. As MAM develops its U.S. client base, the necessity for expertise in other areas may arise, and other fund managers may be added to its Form ADV, as appropriate. The fund management staff of MAM serving U.S. clients may increase or decrease depending on the success of its U.S. business, and we therefore request that the no-action relief not be predicated on the number of fund managers that will be providing advice to U.S. clients.

3. Communications with Clients. Communications with non-U.S. clients will not indicate that the entity sending the communication (which could be MAM or a division of MAM) is registered under the Advisers Act. Where communications are sent to both U.S. and non-U.S. clients (i) separate communications will be sent, (ii) references to MAM's registration under the Advisers Act will be deleted or (iii) the communication will make it clear that the entity will be complying with the Advisers Act only with respect to its U.S. clients. Part of the responsibilities of the compliance officers will be to ensure that all communications with clients, whether oral or written, are made such that non-U.S. clients will not be given the impression that their accounts will be subject to the Advisers Act.

4. Form ADV. MAM's Form ADV and WIMI's Form ADV will disclose the names of all individuals and Participating Affiliates involved in generating investment advice to be used on behalf of U.S. clients and the required biographical and ownership information for all such individuals and Participating Affiliates. *

The Form ADV will also describe the investment strategies to be utilized by MAM, the types of clients it advises and the types of investments for which it provides advice. In addition, the Form ADV will disclose that all client records for U.S. clients will be maintained on a computer system that also maintains records of non-U.S. clients and that dealing arrangements for U.S. and non-U.S. clients will be handled by the same group of dealers. (See discussion below).

5. Compliance with the Advisers Act. MAM will maintain a compliance manual (as it presently does) which sets out procedures to ensure compliance with the regulatory regimes that are applicable, including the U.S. securities laws and regulations, U.K. Regulations and ERISA and its regulations. In addition, as required by U.K. Regulations, MAM will have a compliance officer or officers (as it presently does) responsible for overseeing adherence to the procedures in the compliance manual. The compliance officers will advise all fund managers who advise U.S. clients on the procedures to be followed in relation to U.S. clients and will report to the subcommittee of the Board of Directors, who will report to the full Board of Directors. In addition, the compliance director of MAM Group will report to MAM's and WIMI's Boards of Directors concerning compliance by fund managers of Participating Affiliates. The compliance officers will also advise all fund managers that when dealing with non-U.S. clients they must not present themselves as officers of a U.S. registered adviser or otherwise suggest to such clients that they will obtain the protection of contracting with a company registered under the Advisers Act or otherwise subject to SEC regulation.

6. Record Keeping by MAM and WIMI. MAM and WIMI will maintain all records required by the Advisers Act and Rules thereunder with respect to all their clients and may do so through affiliated companies which provide administrative services.

WIMI and MAM will promptly provide to the SEC or the Staff upon receipt of an administrative subpoena, demand or a request for voluntary cooperation made during a routine or special inspection or otherwise any and all books and records described in this paragraph 6 and promptly make available for testimony or other questioning any and all personnel (other than clerical or ministerial personnel) identified by the SEC, the Staff, MAM or WIMI.

The client transaction records for both U.S. and non-U.S. clients will be maintained on a single computer system, but records relating to U.S. clients will be separately coded and separately retrievable. In order to ensure the privacy of non-U.S. clients, in the event that the Commission wishes to obtain records or testimony or conduct other questioning relating to non-U.S. clients (e.g., in order to ensure that there has been no discrimination against U.S. clients), records relating to non-U.S. clients may be provided to the Commission by identifying number rather than by name of client. MAM and WIMI will maintain the staff trading records required by Rule 204-2(a)(12). MAM and WIMI back office personnel will maintain all account records and will perform clearing and settlement services for both U.S. and non-U.S. clients.

7. Record Keeping and Production of Documents and Personnel by Participating Affiliates. Participating Affiliates will maintain records of transactions for non-U.S. Persons which are related to advice to U.S. Persons ("related transactions") in accordance with the retirements of U.K. Regulations (if the related transaction involves a non-U.S. client of or WIMI) or in accordance with local law (if the related transaction involves a non-U.S. client of a non-U.K. Participating Affiliate). Participating Affiliates will also retain books and records of the type described in Rule 204-2(a)(1), (2), (4), (5) and (6) and Rule 204-2(c) for all transactions. With respect to transactions involving U.S. clients and all related transactions, the Participating Affiliates also will retain records of the type described in Rule 204-2(a)(3) and (7).

The Participating Affiliate will promptly provide to the SEC or the Staff, upon receipt of an administrative subpoena, demand or a request for voluntary cooperation made during a routine or special inspection or otherwise any and all books and records described in this paragraph 7, and make available for testimony or other questioning any and all personnel (other than clerical and ministerial personnel) identified by the SEC, the Staff, MAM, WIMI or any Participating Affiliate as having been involved in advice to U.S. clients or related transactions at such place as the SEC may designate in the United States or, at the SEC's option, in the country where the records are kept or such personnel reside and, to the extent that any books and records are not kept in English, cause such books and records to be translated into English upon reasonable advance request by the SEC or the Staff. Participating Affiliates will authorize all personnel described in the preceding sentence to testify about all advice to U.S. clients and any

related transactions (except with respect to the identity of non-U.S. clients) Participating Affiliates will not (except for 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.

As discussed above for MAM, all records, testimony or responses to other questioning relating to non-U.S. clients would be provided by identifying number rather than by name of client. Participating Affiliates will also maintain the staff trading records required by Rule 204-2(a)(12) for all "advisory representatives" who are involved in giving advice to U.S. clients. The aforementioned records 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 record.

8. Submission to Jurisdiction. Each Participating Affiliate (i) will submit to the jurisdiction of the U.S. courts for actions arising under the U.S. securities laws in connection with investment advisory activities for U.S. clients of MAM or WIMI and (ii) will appoint an agent for service of process that will be authorized to accept the service of administrative subpoenas from the SEC for the production of documents and testimony and for the production of persons. The agent for service 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 provided to U.S. clients or any related transaction. Documents effecting these actions, in the form of Exhibit A hereto, will be filed by Participating Affiliates with the SEC.

9. Financial Statements and Capital. MAM will continue to prepare annual audited financial statements that are available for public inspection as required by the U.K. Companies Act 1985, as amended. MAM will have a minimum capital of at least $ 100,000 (or such higher amount as the IMRO minimum capital rules may require) and will maintain its capital at a level reasonably considered adequate by its Board of Directors.

10. Dealing Room. Dealing arrangements for U.S. and non-U.S. clients will be handled by a single group of MAM Group employees who will comply with all U.K. Regulations in transactions with brokerage firms worldwide. Additionally, dealing arrangements for U.S. clients will be conducted in conformity with the provisions of the Advisers Act. Although IMRO would allow MAM to use brokers which are MAM affiliates (so long as the transaction is done on an arms-length basis and the affiliation is disclosed to the client), MAM will not use brokers which are MAM affiliates when acting on behalf of U.S. clients.

11. Soft Dollar Arrangements. MAM currently contemplates that it will use soft dollar arrangements in connection with the placing of brokerage transactions on behalf of its clients. Any such arrangements will be made, with respect to U.S. clients, in compliance with Section 28(e) of the Securities Exchange Act of 1934 and, with respect to U.K. clients, in compliance with the IMRO rules on Soft Commission.

> ** Such specialities might include, for example, equity investments in a particular country or industry, fixed income securities constituting a small portion of a principally equity portfolio, options or special situation investments.*
>
> ** Part II of MAM's Form ADV and WIMI's Form ADV or any separate brochure prepared by MAM or WIMI in accordance with Rule 204-3 under the Advisers Act will disclose that the Participating Affiliates are not registered with the Commission.*

The proposed operating structure described above has been designed to ensure that the advice given to U.S. clients and the manner in which their accounts are administered will comply with all applicable U.S. laws and regulations. All advice to MAM's U.S. clients will be given under the supervision of the Board of Directors of MAM. Because MAM and each participating Affiliate will submit to the jurisdiction of the U.S. courts in connection with advice given to U.S. clients and will appoint an agent for service of process in the United States U.S. clients will have the ability to seek remedies in U.S. courts directly against MAM and each Participating Affiliate.

Because MAM will be permitted to advise both U.S. and non-U.S. clients, it will not be feasible to keep advice to U.S. clients confidential from fund managers for non-U.S. clients, as required by the SEC in

previous no-action letters. We believe, however, that confidentiality is not justified in these circumstances because both U.S. and non-U.S. clients will continue to be protected by U.K. Regulations relating to best execution and allocation of scarce stock, and all U.S. clients will continue to be fully protected by the antifraud provisions of the U.S. securities laws. The Staff also has expressed a concern that the potential for "scalping" exists where personnel of a non-registered entity have access to investment advice provided by a registered subsidiary (see Price Waterhouse, SEC No-Action Letter, July 16, 1987). We believe, however, that "scalping" should not be a concern under the MAM Group proposal as MAM will be registered and the protections provided by U.K. Regulations should alleviate these concerns as between U.S. and non-U.S. clients. In addition, because MAM and Participating Affiliates will maintain the staff trading records required by Rule 204-2(a)(12), the compliance officer and the Staff will have the ability to review trading by personnel within MAM and each Participating Affiliate to ensure that no scalping or other improprieties occur.

The Staff may have some concern, as expressed in earlier no-action letter responses, that there be no discrimination against U.S. clients in the allocation of scarce stock or otherwise. We are advised by MAM Group that this situation is most unlikely to arise, since it would make little long-term commercial sense to favor one group of clients over another, particularly in a market made up of large institutional investors many of whom employ consultants to monitor the performance of their investment advisers. It is possible for inadvertent discrimination to occur where a registered investment adviser operating under the Richard Ellis guidelines makes a separate purchase order, which is substantially smaller than that of the adviser's parent's order, and may thereby obtain less advantageous terms. Under the proposal described herein, such an order could be made jointly to obtain the best terms, and allocation of scarce stock would then be made in accordance with IMRO's allocation rules which require that, where securities are bought collectively, in the subsequent allocation among client accounts the IMRO member must not give unfair preference to itself or to any of those for whom it dealt and must allocate any aggregated transaction at the price paid per unit allocated except where a series of transactions is effected with a view to achieving one investment decision or objective in which case a uniform price must be attributed to each unit.

The Staff also may be concerned that fund manages will hold themselves out to non-U.S. Persons as officers of U.S. registered advisers and that these clients will mistakenly believe that they are entitled to the protections afforded by the Advisers Act. As set forth above, however, all fund managers will be instructed in the compliance procedures applicable to U.S. clients and non-U.S. clients. Accordingly, each fund manager will understand that communications to non-U.S. clients, whether oral or written, should not in any way indicate that the client will obtain the protection of contracting with a company that is registered under the Advisers Act or otherwise subject to SEC regulation and that where communications are sent to both U.S. and non-U.S. clients (i) separate communications should be sent, (ii) references to MAM's registration under the Advisers Act should be deleted or (iii) the communication should make clear that the entity will be complying with the Advisers Act only with respect to its U.S. clients. Each fund manager also will understand that he is responsible to the compliance officer and to the Board of Directors of MAM for compliance with the foregoing requirements.

Attempts to comply with the current guidelines in this area have proved increasingly impracticable and expensive for MAM Group and disruptive of its efforts to serve its U.S. clients well. In our view, MAM Group's proposal is consistent with the purposes of the Advisers Act because (1) all advice rendered to U.S. Persons would be rendered in accordance with the Advisers Act and Rules; (2) U.S. clients would receive full disclosure on Form ADV of the identities, qualifications, strategies and potential conflicts of interest of all individuals and entities that might be deemed to be providing them with advice; (3) MAM, WIMI and Participating Affiliates are amenable to suit in the United States; and (4) the SEC would have access to the fullest extent permitted by law to all relevant information from MAM, WIMI and Participating Affiliates that relates to activities, with or on behalf of its U.S. clients that is necessary to an investigation under the Advisers Act.

MAM's operations under the guidelines set forth in this letter will not only permit MAM Group to provide the highest quality advice to its U.S. clients, but also will effectively satisfy the policy and purposes of the Advisers Act. The arrangements outlined in this letter also will facilitate the SEC's oversight of all operations affecting U.S. clients and the administration of the Advisers Act by the Staff without disrupting MAM Group operations outside the United States with non-U.S. clients. All records,

statements, substantive client communications, and other materials related to MAM Group's investment advisory activities for U.S. Persons will be available to the Staff.

In granting this no-action request, the Staff in our view will advance the public interest by providing a model for other U.K.-based advisers which operate affiliates registered under the Advisers Act. For the reasons set forth above, we request that the Staff indicate that it will not recommend that the SEC initiate enforcement action against MAM and the Participating Affiliates under Section 203 of the Advisers Act if MAM and WIMI conduct the activities described above.

If you have any questions on the above please feel free to call me at the number indicated above or Nora M. Jordan at (212) 450-4684 or Gary L. Granik at (212) 450-4721.

Very truly yours,

Pierre de Saint Phalle