

MURRAY JOHNSTONE HOLDINGS LIMITED; MURRAY JOHNSTONE LIMITED; MURRAY JOHNSTONE INTERNATIONAL LIMITED

**Investment Advisers Act of 1940 -- Section 203(a)
October 7, 1994**

**SEC-REPLY-1:
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
October 7, 1994**

**RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT
Our Ref. No. 94-457-CC
Murray Johnstone Holdings Limited; Murray Johnstone Limited; Murray Johnstone International Limited
File No. 801-34926**

In your letter dated July 21, 1994, you request assurances that the staff would not recommend enforcement action to the Commission if Murray Johnstone International Limited ("MJI"), an adviser that is organized under the laws of Scotland and is registered with the Commission under the Investment Advisers Act of 1940 (the "Advisers Act"), advises foreign clients without complying with the Advisers Act as specified in your letter. You further request assurances that the staff would not recommend enforcement action to the Commission if certain entities within the Murray Johnstone Group (as defined below) provide investment advisory services to U.S. clients without registering under the Advisers Act.

n1

Murray Johnstone Holdings Limited ("MJ Holdings") and its controlled affiliates, including its wholly owned subsidiaries MJI and Murray Johnstone Limited ("Murray Johnstone"), comprise the Murray Johnstone Group. MJ Holdings is a wholly owned subsidiary of United Asset Management Corporation ("UAM"). MJ Holdings, through Murray Johnstone, holds 50% or more of twelve additional affiliates, including wholly owned Murray Johnstone Buyout Management (Jersey) LTD (the "MJL Jersey Subsidiary").

Murray Johnstone has headquarters in Glasgow and offices in London, Manchester and Paris. MJI has headquarters in Glasgow and an office in Chicago. Murray Johnstone and MJI are regulated in the United Kingdom by the Investment Management Regulatory Organisation, the U.K. self-regulatory organization that regulates persons engaged in the investment management business. MJI was formed to provide investment advisory services to U.S. clients. No member of the Murray Johnstone Group other than MJI is registered with the Commission under the Advisers Act.

The Murray Johnstone Group proposes that certain entities provide investment advice to U.S. clients through MJI either directly or by having their personnel participate in MJI's U.S. investment advisory business (the "Participating Affiliates"). Consistent with this proposal, Participating Affiliates and MJI may communicate with each other about advice given to MJI's clients or prospective clients before that advice is disseminated. They also may share personnel (including directors, officers and employees), office space, records, telephone lines, and other facilities. As described in further detail below, the Commission will be able to monitor the activities of any affiliate involved in, or having access to, MJI's U.S. advisory activities.

Section 203(a) of the Advisers Act requires any investment adviser, whether domestic or foreign, that uses U.S. jurisdictional means in connection with its business as an investment adviser to register with the Commission, unless the adviser is exempt from registration. The Division has determined that the substantive provisions of the Advisers Act generally should not govern the relationship between an investment adviser located outside the U.S. and its foreign 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 U.S. clients and to ensure the integrity of U.S. markets, a

registered foreign adviser must comply with certain Advisers Act recordkeeping requirements and provide the Commission with access to foreign personnel with respect to all its activities. n3

The Division also believes that affiliates of registered foreign advisers do 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 U.S. or abroad) who are capable of providing investment advice; all persons that provide advice to U.S. clients or have access to any information concerning which securities are recommended to U.S. clients prior to the effective dissemination of the recommendations are deemed to be "associated persons" of the registrant; n4 and the Commission has access to trading and other records of affiliates involved in, or having access to, U.S. advisory activities, and to the affiliates' personnel, to the extent necessary to monitor and police conduct that may harm U.S. clients or markets. n5

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 MJI does not comply with the following provisions of the Advisers Act and rules thereunder with respect to its foreign clients: n6 (i) subparagraphs (3) and (7) of paragraph (a) of Rule 204-2 with respect to transactions involving foreign clients that do not relate to advisory services performed by it on behalf of U.S. clients or to related securities transactions; n7 (ii) subparagraphs (8), (9), (10), (11), (14), (15), and (16) of paragraph (a) of Rule 204-2 and all of paragraph (b) of Rule 204-2 with respect to transactions involving, or representations or disclosures made to, foreign clients; (iii) Sections 205, 206(3), and 215(b); and (iv) Rules 204-3, 206(4)-1, 206(4)-2, 206(4)-3, and 206(4)-4.

Furthermore, to the extent that the acts or omissions of MJI involve no conduct, or have no effects, in the U.S., or have no effects on U.S. clients of MJI, we would not recommend enforcement action to the Commission against MJI for failing to enforce any policies or procedures required by or established pursuant to Section 204A, or for acts or omissions that violate subparagraphs (1), (2), or (4) of Section 206.

We further would not recommend that the Commission take any enforcement action if the Participating Affiliates provide investment advice to U.S. persons through MJI as described in your letter without registering under the Advisers Act. Our position is based on the facts and representations in your letter, which because of their importance are restated below. MJI:

MJI represents that:

1. it will comply in all respects with all the requirements of the Advisers Act with respect to its U.S. clients;
2. it will maintain all books and records in accordance with Rule 204-2 under the Advisers Act with respect to its foreign clients, except as specifically stated above;
3. it will promptly provide to the Commission or the staff upon receipt of an administrative subpoena, demand, or request for voluntary cooperation made during a routine or special inspection or otherwise, any and all books and records undertaken in the request to be kept, and those required to be kept by foreign law; n8
4. it will promptly make available for testimony before, or other questioning by, the Commission 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 of its personnel, with the exception of clerical or ministerial personnel;
5. it will list on its Form ADV all directors of MJI and each investment manager of MJI (whether or not also a director of MJI) who provides advice to U.S. clients, and the names of all individuals and Participating Affiliates involved in generating investment advice to be used for or on behalf of U.S. clients and the required biographical and ownership information for all such individuals and Participating Affiliates;
6. it will not hold itself out to foreign clients as being registered under the Advisers Act. Where communications are sent to both U.S. and foreign clients, (i) separate communications will be sent, (ii) references to MJI's registration under the Advisers Act will be deleted in

- communications with foreign clients; or (iii) the communication with foreign clients will make clear that MJJ will be complying with the Advisers Act only with respect to U.S. clients;
7. any advice given to U.S. persons from Participating Affiliates will be given through MJJ or through employees of Participating Affiliates participating in MJJ's U.S. advisory business;
 8. it will deem as an "associated person" each Participating Affiliate and each employee of the Participating Affiliate whose functions or duties relate to the determination and recommendations that MJJ makes to its U.S. clients, or who has access to any information concerning which securities are being recommended to MJJ's U.S. clients prior to the effective dissemination of the recommendations (including dealing room personnel, if trades for MJJ clients are placed for execution with any affiliate of MJJ).

Participating Affiliates:

Each Participating Affiliate represents that:

- A. 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 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). It also will maintain the staff trading records required by Rule 204-2(a)(12) for all of its "advisory representatives" who are involved in giving advice to U.S. clients; n9 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;
- B. 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 staff any and all of the books and records described in paragraph A above, and make available for testimony before, or other questioning by, the Commission or the staff any and all personnel (other than clerical or ministerial personnel) identified by the Commission, the staff, MJJ or any Participating Affiliate, as having access to or having been involved in giving advice to be used for or on behalf of MJJ's U.S. clients or related transactions, at such place as the Commission may designate in the U.S. 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 to be used for or on behalf of MJJ's U.S. clients and any related transactions (except with respect to the identity of foreign clients). Participating Affiliates will not (except with respect to the identity of foreign clients) contest the validity of administrative subpoenas for testimony or documents under any laws or regulations other than those of the U.S.; n10
- C. it (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 MJJ, and (ii) will appoint an agent resident in the U.S. 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 MJJ and/or the Participating Affiliate or to which MJJ 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 U.S. 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 MJJ investment advisory activity. No Participating Affiliate will have access to or provide investment advice to be used for or on behalf of MJJ's U.S. clients until documents effecting the appointment of an agent have been filed by the Participating Affiliate with the Commission in the form of the document attached as Exhibit A to your letter of July 21, 1994. n11

The proposed activities of the Participating Affiliates are similar to activities for which the Division previously has granted no-action relief. The Murray Johnstone Group proposes, in addition, that the MJL Jersey Subsidiary continue to have U.S. clients without holding itself out generally to the public in the U.S. as an investment adviser n12 in reliance on the exemption from registration under Section 203(b)(3) of the Advisers Act. n13 The MJL Jersey Subsidiary provides investment advisory services to Murray Johnstone LBO Fund L.P., a limited partnership organized under the laws of Delaware (the "LBO Fund"). You are concerned that the MJL Jersey Subsidiary might not be able to rely on its exemption from registration under Section 203(b)(3) because of its relationship with certain entities within the Murray Johnstone Group. n14 You believe, however, that the activities of the MJL Jersey Subsidiary are separate and independent from those of MJJ and the Participating Affiliates so that the MJL Jersey Subsidiary may continue to advise U.S. clients and remain exempt from Advisers Act registration, even if the Murray Johnstone Group proceeds with the proposal outlined in your letter.

We would not recommend that the Commission take any enforcement action if the MJL Jersey Subsidiary does not integrate with MJJ for purposes of Section 203(b)(3) and provides advice directly to U.S. clients in reliance on its exemption from registration. Our position is based on the facts and representations in your letter, especially that the MJL Jersey Subsidiary will be operated separately and independently from the rest of the Murray Johnstone Group. n15

You also are concerned that the MJL Jersey Subsidiary might not be able to rely on its exemption from registration under Section 203(b)(3) because of its affiliation with entities outside of the Murray Johnstone Group that are engaged in investment management. You have requested our assurance that we would not recommend enforcement action to the Commission if the MJL Jersey Subsidiary considers only the entities within the Murray Johnstone Group as "related persons" for the purpose of counting the number of the MJL Jersey Subsidiary's U.S. clients under Rule 203(b)(3)-1. Under Rule 203(b)(3)-1, an adviser to a limited partnership may count only the limited partnership, instead of each limited partner, towards the fewer than fifteen client limit of Section 203(b)(3). If, however, a limited partner also is a client of a "related person," that is, a person with whom the adviser is under common control, then the adviser must count that limited partner as a client for purposes of the Rule.

You state that, in addition to MJ Holdings, UAM holds 35 companies ("UAM Affiliates") engaged in institutional investment management. You state that, although each UAM Affiliate operates independently of UAM under its own name and under its own management, the MJL Jersey Subsidiary would consider the UAM Affiliates as "related persons" under the Rule. You further state that, because the limited partners of the LBO Fund are substantial institutional investors with a wide range of advisers, it is very possible that they also may be advisory clients of entities within the broad network of independent advisers assembled by UAM. This could require the MJL Jersey Subsidiary to count the limited partners of the LBO Fund as clients and cause the MJL Jersey Subsidiary to lose its exemption from registration. n16 You believe that, because of the Murray Johnstone Group's independence from UAM and the UAM Affiliates, Rule 203(b)(3)-1 should be applied only within the Group for purposes of determining the number of U.S. clients of the MJL Jersey Subsidiary.

We would not recommend that the Commission take any enforcement action if the Murray Johnstone Group considers only the entities within the Group as "related persons" within the meaning of Rule 203(b)(3)-1 for the purposes of determining the number of U.S. clients of the MJL Jersey Subsidiary. n17

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.

Alison E. Baur
Senior Counsel

Footnotes

n1 In a telephone conversation on September 30, 1994 with Alison Baur, Robert Stemmons, counsel to MJI, clarified certain points and agreed to several changes from the language in the no-action request. We have noted these changes in our response.

n2 See Mercury Asset Management plc (pub. avail. Apr. 16, 1993) ("Mercury Asset Management"); The National Mutual Group (pub. avail. Mar. 8, 1993) ("National Mutual"); Uniao de Bancos de Brasileiros S.A. (pub. avail. July 28, 1992) ("Unibanco").

n3 See Mercury Asset Management, National Mutual, Unibanco supra.

n4 See Kleinwort Benson Investment Management Limited (pub. avail. Dec. 15, 1993) ("Kleinwort Benson"). A registered adviser is obligated to monitor the activities of associated persons. See, e.g., Sections 203(e)(5) and 204A of the Advisers Act.

n5 See Kleinwort Benson, supra.

n6 You define the term "foreign client" as meaning a person who is not a U.S. client. The staff looks to the definition of U.S. person in paragraph 902(o) of Regulation S under the Securities Act of 1933 for guidance in interpreting the meaning of U.S. client in this no-action response. For the purposes of this response, U.S. client includes members of identifiable groups of U.S. citizens abroad, such as members of the U.S. armed forces serving overseas. Of course, investment advice provided in the U.S., whether to U.S. residents or foreign residents, must be provided in accordance with the Advisers Act.

n7 The Division interprets the term "related securities transaction" broadly.

n8 See supra note 1.

n9 You state that employees of the Murray Johnstone Group who maintain or have access to MJI's records will be treated as "advisory representatives" of MJI. You further state that all persons deemed to be "associated persons" of MJI also will be treated as advisory representatives of MJI.

n10 See supra note 1.

n11 See supra note 1.

n12 See supra note 1.

n13 Under Section 203(b)(3), an investment adviser that has fewer than fifteen clients and does not hold itself out generally to the public as an investment adviser need not register with the Commission under the Advisers Act. A foreign adviser seeking to rely on Section 203(b)(3) need only count its U.S. clients towards the fifteen client limit, and may not hold itself out to the public in the U.S. as an investment adviser. See, e.g., Murray Johnstone Ltd. (pub. avail. Apr. 17, 1987); Alexander, Holburn, Beaudin & Lang (pub. avail. Aug. 13, 1984).

n14 You acknowledge that the MJL Jersey Subsidiary contracts for investment advice from the "Venture Capital Team," which is controlled and managed by Murray Johnstone Private Equity Limited ("Private Equity"), a wholly owned subsidiary of Murray Johnstone. You represent that although MJI, Murray Johnstone and Private Equity have three directors in common, these directors will not be involved in any investment advice given to the MJL Jersey Subsidiary, the LBO Fund or to MJI. You further represent that Murray Johnstone and Private Equity have four other directors in common, but that these directors will not be involved in any investment advice given to MJI or non-venture capital clients of Murray Johnstone.

n15 See 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 integrated with the registrant for Section 203(b)(3) purposes and regulated under the Advisers Act); Davis, Skaggs & Co., Inc. (pub. avail. Aug. 21, 1981) (affiliate of registered adviser did not have to be integrated with the registrant for Section 203(b)(3) purposes where the affiliate was operated separately from the registered adviser in terms of financing, sources of information, and personnel).

n16 You state, however, that the LBO Fund currently has only twelve U.S. limited partners.

n17 You also ask if unregistered entities within the Murray Johnstone Group can provide investment advice to foreign clients solely in accordance with applicable foreign law without being required to register under the Advisers Act and without complying with its provisions, so long as these activities do not involve conduct or effects in the U.S. We note that, as a condition of this no-action relief, the Participating Affiliates will comply with certain recordkeeping provisions of the Advisers Act for all transactions. Assuming that the unregistered entities' activities with foreign clients do not involve conduct or effects in the U.S., they need not register separately under the Advisers Act.

INQUIRY-1: CURTIS, MALLET-PREVOST, COLT & MOSLE
TWO THROGMORTON AVENUE
LONDON, EC2N 2DL
TELEPHONE: 071-638-7957
TELEX: 264094 CMPCM
TELECOPIER: 071-638-5512
July 21, 1994

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: The Murray Johnstone Group

Requests for Assurances
The Murray Johnstone Group
The Conduct and Effects Tests
Proposals and Discussion of Requests Nos. 1 and 2
Undertakings for Requests Nos. 1 and 2
Discussion of Request No. 3

Ladies and Gentlemen:

We are counsel to Murray Johnstone Holdings Limited, a limited liability company organized under the laws of Scotland ("MJ Holdings"), and its wholly owned subsidiaries, Murray Johnstone Limited ("Murray Johnstone") and Murray Johnstone International Limited ("MJI"), each a limited liability company organized under the laws of Scotland. MJI is a registered adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). MJ Holdings recently became a wholly owned subsidiary of United Asset Management Corporation ("UAM"), as more fully discussed below.

A. Requests for Assurances

On behalf of MJ Holdings and its controlled affiliates, including Murray Johnstone and MJI and excluding UAM and UAM's other controlled affiliates (MJ Holdings and its controlled affiliates are herein referred to

as the "Murray Johnstone Group"), we request assurance that the staff (the "Staff") of the Division of Investment Management (the "Division") of the Securities and Exchange Commission (the "Commission") would not recommend enforcement action to the Commission if, as more fully described in this letter:

1. Entities within the Murray Johnstone Group other than MJJ do not register under the Advisers Act, notwithstanding that --

(a) MJJ provides investment advisory services to United States clients, n1

(b) such entities provide investment advisory services to foreign clients n2 solely in accordance with applicable foreign law,

(c) such entities provide investment advisory services to United States clients through MJJ either directly or by having personnel from such entities participate in the U.S. investment advisory business of MJJ (such entities, "Participating Affiliates"), and

(d) such entities other than Participating Affiliates solicit or have U.S. clients independently of MJJ so long as such entities are exempt from such registration under the Advisers Act;

2. MJJ provides investment advisory services to foreign clients solely in accordance with applicable foreign law without also complying with the provisions of the Advisers Act, and in particular:

(a) without complying with the following provisions of the Advisers Act and the rules thereunder with respect to its relationships with its foreign clients --

(i) subparagraphs (3) and (7) of paragraph (a) of Rule 204-2 with respect to transactions involving foreign clients that do not relate to advisory services performed by it on behalf of United States clients or to related securities transactions, n3

(ii) subparagraphs (8), (9), (10), (11), (14), (15) and (16) of paragraph (a) of Rule 204-2 and all of paragraph (b) of Rule 204-2 with respect to transactions involving, or representations or disclosures made to, foreign clients,

(iii) Sections 205, 206(3), and 215(b) of the Advisers Act, and

(iv) Rules 204-3, 206(4)-1, 206(4)-2, 206(4)-3, and 206(4)-4, and

(b) to the extent that the acts or omissions of MJJ involve no conduct, or have no effects, in the United States, or have no effects on United States clients of MJJ --

(i) without enforcing any policies or procedures required by or established pursuant to Section 204A, or

(ii) by engaging in acts or omissions that violate subparagraphs (1), (2) or (4) of Section 206; and

3. The MJL Jersey Subsidiary (as defined below) does not register as an investment adviser in reliance upon the exemption from registration set forth in Rule 203(b)(3) under the Advisers Act, based upon the inclusion of only entities within the Murray Johnstone Group, and not other affiliates of UAM, among "related persons" within the meaning of Rule 203(b)(3)-1(a)(1) and (3) under the Advisers Act.

B. The Murray Johnstone Group

The Murray Johnstone Group is one of Scotland's largest investment management groups. In addition to Murray Johnstone and MJJ, MJ Holdings has a third wholly owned subsidiary, Murray Johnstone (General Partner) Limited, a limited liability company organized under the laws of England, and MJ Holdings, through Murray Johnstone, holds 50% or more of twelve more affiliates, including wholly owned Murray Johnstone Buyout Management (Jersey) LTD, a limited liability company organized under the laws of Jersey (the "MJL Jersey Subsidiary").ⁿ⁴ MJ Holdings may in the future have other controlled affiliates, all of which for purposes of this request letter will be included in the Murray Johnstone Group.

Murray Johnstone has headquarters in Glasgow and offices in London, Manchester and Paris. MJJ has headquarters in Glasgow and an office in Chicago. As of February 28, 1994, the Murray Johnstone Group had approximately \$ 7.5 billion in assets under discretionary and non-discretionary management in six principal areas: investment trusts; unit trusts; pension funds, international investment services; unquoted investments; and United Kingdom private clients. Murray Johnstone and MJJ are regulated in the United Kingdom by the Investment Management Regulatory Organisation ("IMRO"), a self-regulatory organization sanctioned by the United Kingdom's Financial Services Act of 1986. In addition, two subsidiaries of Murray Johnstone are regulated by IMRO and another subsidiary is regulated by IMRO and the Life Assurance and Unit Trust Regulatory Organisation ("LAUTRO"), a self-regulatory organization sanctioned under the Financial Services Act of 1986.ⁿ⁵

MJJ was formed to provide investment advisory services to United States clients. No member of the Murray Johnstone Group other than MJJ is registered under the Advisers Act. MJJ obtains research from the Murray Johnstone Group and contracts with other research providers for research that is not available from the Murray Johnstone Group. MJJ is staffed with personnel who are capable of providing investment advice, as disclosed in its Form ADV on file with the Commission, currently consisting of six investment professionals with a total of 44 years of service with the Murray Johnstone Group and 53 years of experience in the investment advisory industry.

The MJL Jersey Subsidiary provides investment advisory services to Murray Johnstone LBO Fund L.P., a limited partnership organized under the laws of Delaware (the "LBO Fund"). The LBO Fund currently has 12 United States limited partners. The MJL Jersey Subsidiary is not registered as an investment adviser under the Advisers Act in reliance upon Section 203(b)(3) of the Advisers Act, which provides under certain conditions an exemption from registration for advisers with fewer than fifteen clients, and Rule 203(b)(3)-1 under the Advisers Act, which provides a safe harbor under certain conditions allowing a partnership, rather than each of its limited partners, to be counted as an adviser's investment advisory client.ⁿ⁶ The MJL Jersey subsidiary, as general partner of the LBO Fund, receives compensation that would be considered a performance fee that, generally, a registered investment adviser would be prohibited from receiving pursuant to Section 205 of the Advisers Act.

The operations of Murray Johnstone and MJJ are currently structured to follow the conditions set forth by the Staff in Richard Ellis (pub. avail. September 17, 1981),ⁿ⁷ in order that Murray Johnstone not be required to register as an investment adviser under the Advisers Act.ⁿ⁸

On November 16, 1993, UAM acquired MJ Holdings pursuant to a Recommended Offer conducted under United Kingdom law. On that date, subject only to the completion of acquisition procedures, MJ Holdings became an indirect wholly owned subsidiary of UAM.

C. The Conduct and Effects Tests.

In May 1992ⁿ⁹ the Division reported on its reexamination of its interpretation of the reach of the Advisers Act and concluded that the policies and purposes of the Advisers Act and legal analyses that have been applied in other securities law contexts, i.e., the conduct and effects tests,ⁿ¹⁰ lead to the conclusion that a more flexible interpretation is appropriate. The Division has applied the conduct and effects tests in Uniao de Bancos Brasileiros S.A. ("Unibanco") (pub. avail. July 28, 1992), The National Mutual Group ("NMG") (pub. avail. March 8, 1993), Mercury Asset Management plc ("MAM") (pub. avail.

April 16, 1993) and Kleinwort Benson Investment Management Limited et. al ("Kleinwort") (pub. avail. December 15, 1993).

In Unibanco the Division reconsidered the position taken in Richard Ellis concerning the conditions required for a registered investment adviser to be considered sufficiently separate from its foreign parent to not require the foreign parent to register under the Advisers Act. As the Division stated in Unibanco, while the Richard Ellis conditions provide a framework that permits foreign investment advisers to offer advice to clients in the United States, many foreign investment advisers find it difficult to operate under the Richard Ellis conditions. The Division also stated that, consistent with the conduct and effects approach, the Division will allow non-United States advisers greater flexibility than permitted under Richard Ellis in organizing United States-registered subsidiaries.

The Division will recognize separateness if:

- (i) the affiliated companies are separately organized (e.g., two distinct entities);
- (ii) the registered entity is staffed with personnel (whether physically located in the United States or abroad) who are capable of providing investment advice;
- (iii) all persons involved in the United States advisory activities are deemed "associated persons" n11 of the registrant; and
- (iv) the Commission has adequate access to trading and other records of each affiliate involved in the 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.

In Unibanco the Division also stated that it would not recommend enforcement action if Unibanco's U.S.-registered subsidiary provided investment advice to its non-U.S. clients solely in accordance with the non-U.S. law that might apply to the subsidiary's activities with those non-U.S. clients, so long as they would not involve conduct or effects in the United States.

In Unibanco the Staff was not called upon to consider which specific provisions of the Advisers Act and the rules thereunder need not, in light of the conduct and effects analysis, be complied with by a U.S.-registered adviser with respect to such adviser's non-U.S. clients. In NMG the Staff was asked to consider this question with respect to certain provisions and rules, and the Staff stated that, consistent with the conduct and effects analysis and based on certain conditions and undertakings, it would not recommend enforcement action if four affiliated U.S.-registered advisers did not comply with such provisions of the Advisers Act and the rules thereunder with respect to their foreign clients. Such provisions included certain record-keeping requirements.

In MAM the Staff stated that, consistent with the conduct and effects analysis and based on certain conditions and undertakings, (i) it would not recommend enforcement action if the parent of a registered adviser were to register but comply with the Advisers Act only with respect to its United States clients and not with respect to foreign clients, and (ii) if affiliates of the registered advisers (defined therein, as in this request letter, as "Participating Affiliates") were to provide investment advice to United States clients through the registered advisers without registering under the Advisers Act. n12 In the area of recordkeeping, MAM took a different approach than that taken in NMG, in that in MAM the registered adviser undertook to comply with the record-keeping requirements of Rule 204-2 with respect to all its clients, whereas in NMG the registered advisers did not undertake to comply with certain provisions of Rule 204-2 with respect to its foreign clients. The Murray Johnstone Group, while seeking assurances from the Staff based on MAM, are, in the area of record-keeping, making the undertakings made in NMG.

Similarly, in Kleinwort the Staff stated that, consistent with the conduct and effects analysis and based on certain conditions and undertakings, it would not recommend enforcement action if unregistered affiliates of a registered investment adviser (again, defined therein, as in this request letter, as "Participating Affiliates") and the registered investment adviser employ the same individuals (referred to

as "Dual Employees") without the Participating Affiliates' registering under the Advisers Act. In addition to making the undertakings made in MAM, the Murray Johnstone Group are making certain undertakings made in Kleinwort.

D. Proposals and Discussion of Requests Nos. 1 and 2

The Murray Johnstone Group propose to institute, in each case in accordance with applicable foreign law, the structural and operational changes described below that are intended to be consistent with Unibanco, NMG, MAM, Kleinwort and the conduct and effects approach to the Advisers Act. The request numbers contained in the subheadings below refer to the requests for assurances set forth in Section A hereof.

Request No. 1(a): Reorganization of Group

Based on the Staff's position in Unibanco, the Murray Johnstone Group propose to abandon their Richard Ellis organizational structure with respect to Murray Johnstone and MJJ and reorganize their operations in accordance with the criteria set forth in Unibanco. To satisfy such criteria: (i) Murray Johnstone and MJJ will continue to be separately organized; (ii) MJJ will continue to be staffed with personnel capable of providing investment advice; (iii) all persons involved in MJJ's U.S. advisory activities will be deemed "associated persons" of MJJ; and (iv) as more fully stated in the undertakings included herein, the Staff will have adequate access to the records of each affiliate involved in the U.S. advisory activities, and to its personnel. The Murray Johnstone Group request the assurance that the Staff will not seek enforcement action if entities within the Murray Johnstone Group other than MJJ do not register notwithstanding that MJJ provides investment advisory services to United States clients under this organizational structure.

Consistent with these general structural changes, the Murray Johnstone Group want to be able to make the following specific changes.

Communication of Investment Advice. The Murray Johnstone Group desire that MJJ not be required, as it would be under the Richard Ellis conditions, to keep its investment advice to its clients confidential from other entities (or employees thereof) within the Murray Johnstone Group until such advice is communicated to its clients. The Murray Johnstone Group want the Directors, officers and employees of any entity within the Murray Johnstone Group, including MJJ, to be able to communicate with the Directors, officers and employees of any other entity within the Murray Johnstone Group concerning any advice to be given to MJJ's clients or prospective clients before such advice is communicated to MJJ's clients or prospective clients. Any such employee so communicating would be deemed an "associated person" of MJJ, and the entity employing such employee would be a Participating Affiliate. n13

Constitution of MJJ's Board: Sharing of Facilities. The Murray Johnstone Group propose that they be able to constitute the board of directors of MJJ so that any director of MJJ may be a director, officer or employee of a Participating Affiliate n14 within the Murray Johnstone Group. This is not allowed under the Richard Ellis conditions. In addition, Participating Affiliates n15 and MJJ want to be able freely to share personnel (as long as those personnel participating in MJJ's U.S. advisory business, or having access to any information concerning which securities are being recommended to MJJ's U.S. clients prior to the effective dissemination of the recommendations, are deemed "associated persons" of MJJ), office space, records, telephone lines and other facilities.

Three senior directors sit on the Boards of Directors of each of MJJ, Murray Johnstone and Murray Johnstone Private Equity Limited, a wholly owned subsidiary of Murray Johnstone ("Private Equity"). Such senior directors will be prevented from being involved in any decisions for or recommendations as to specific securities transactions to the MJJ Jersey subsidiary and the LBO Fund, because all communications between Private Equity and the MJJ Jersey Subsidiary will be through a subcommittee of the Private Equity Board of Directors that does not include any of such senior directors. Such senior directors also will be prevented from being involved in any decisions for or recommendations as to specific securities transactions to MJJ. Four other directors sit on the Boards of Directors of both Murray Johnstone and Private Equity. Such other directors will be prevented from being involved in decisions or

recommendations as to specific securities transactions to MJI and non-venture capital clients of Murray Johnstone, because of the formal "Chinese Wall" procedures described in the discussion of Request No. 1(d), below.

Request No. 1(b): Foreign Clients of Unregistered Entities

Based on the conduct and effects analysis as stated in Unibanco, NMG, MAM and Kleinwort, the Murray Johnstone Group propose that its entities other than MJI be able to advise foreign clients solely in accordance with applicable foreign law without being required thereby to register under the Advisers Act and without complying with the provisions of the Advisers Act, so long as such activities do not constitute conduct within the territory of the United States and do not have and are not intended to have substantial effects within the United States. We believe this is consistent with the conduct and effects analysis. In NMG the Staff stated that the substantive provisions of the Advisers Act generally need not govern the relationships between an investment adviser located outside the United States and its foreign clients, even though the adviser has registered under the Advisers Act, unless the adviser's activities with foreign clients involve conduct or effects in the United States.

Request No. 1(c): Provision of Investment Advice by Participating Affiliates through MJI either directly or by having Personnel Involved in MJI's U.S. Advisory Business

Based on the Staff's position in MAM and the undertakings included herein, the Murray Johnstone Group propose that Participating Affiliates be able to provide investment advice to United States clients through MJI. Such advice would be provided either directly through MJI or by the dedication of personnel of Participating Affiliates to MJI to thereby give United States clients access to the services of such personnel. Thus, they want to have employees of any Participating Affiliate, including Directors, officers, portfolio managers, research analysts and other employees whose functions or duties relate to the determination of recommendations to clients, to be able to participate in MJI's U.S. investment advisory business, without such Participating Affiliate being required thereby to register under the Advisers Act or, except to the extent of the Participating Affiliates' undertakings in this letter, being subject to the Advisers Act or the regulations thereunder.

Such participation would include investment advisory activities within the territory of the United States and activities outside of the United States that may have, or that may be intended to have, substantial effects within the United States, on investors or markets. It would include any investment advice rendered to MJI's clients and it might include activities that range from employment by MJI to formal or informal secondment to MJI to communicating to MJI's clients from the Participating Affiliate's offices or elsewhere. In any event, all such personnel so participating in MJI's U.S. advisory business, or having access to any information concerning which securities are being recommended to MJI's U.S. clients prior to the effective dissemination of the recommendations, while they may not be directors, officers or employees of MJI, will be deemed to be "associated persons" of MJI for purposes of the Advisers Act. MJI will maintain its own personnel who are capable of providing investment advice.

Request No. 1(d): United States Clients of Entities Within Group other than MJI and Participating Affiliates so long as Exemption from Registration is Available

In Unibanco no affiliate of Unibanco other than its U.S.-registered subsidiary was engaged in the investment management business, and Unibanco represented that it did not currently provide advisory services to United States clients (as that term is used therein) and would not solicit United States advisory clients in the future. This is not the situation with the Murray Johnstone Group. The MJL Jersey Subsidiary has a United States advisory client (the LBO Fund) but is exempt from registration under the Advisers Act.

The MJL Jersey Subsidiary is independent from MJI and all Murray Johnstone Group entities that will be Participating Affiliates, with the exception of a contract for investment advice between the MJL Jersey Subsidiary and Murray Johnstone, as described below. The MJL Jersey Subsidiary is a separately organized Jersey company with paid-in capital of 50,000 shares of \$ 1.00 each, all of which are owned by Murray Johnstone. At December 31, 1993 the MJL Jersey subsidiary had a net worth of £ 615,000.

The LBO Fund is fully invested and will make no new investments. It was organized on January 21, 1988 and under its constituent documents will terminate on January 21, 1998. It is in the divestment stage of its existence although it has about 1/4 of 1% of its original funds available for the refinancing of existing portfolio investments.

The MJL Jersey Subsidiary is the General Partner of the LBO Fund and as such is responsible for the investment, divestment and refinancing decisions of the LBO Fund. The MJL Jersey Subsidiary has a Board of Directors all of whom are independent from the Murray Johnstone Group. The Directors are professionals experienced in the investment business and capable of rendering investment advice to the LBO Fund. Because the LBO Fund is nearing its termination the only work remaining for the MJL Jersey Subsidiary is to maintain the present portfolio and short-term investments, to refinance existing investments and to complete divestments of portfolio investments before termination of the LBO Fund. The MJL Jersey Subsidiary contracts out and delegates all of its administrative functions to an independent Jersey company that is affiliated with an international accounting firm and which specializes in fund administration (the "Fund Administrator"). All of the MJL Jersey Subsidiary's and the LBO Fund's books and records are kept by the Fund Administrator in Jersey and are audited by an unrelated prominent accounting firm. Similarly, their bank accounts are maintained with a Jersey financial institution. All of the MJL Jersey Subsidiary's operations are located in Jersey and are physically separated from the rest of the Murray Johnstone Group. Meetings of the Directors of the MJL Jersey Subsidiary are held in Jersey on a regular quarterly basis and whenever an investment, divestment or refinancing of the LBO Fund is being considered. All documents and instructions required to complete an investment, divestment or refinancing transaction are executed in Jersey by Directors of the MJL Jersey Subsidiary. The Directors of the MJL Jersey Subsidiary review and approve reports that are sent from Jersey to the LBO Fund's investors.

The Directors of the MJL Jersey Subsidiary are responsible for and actually make the investment decisions for the LBO Fund. Neither the Venture Capital Team (referred to below), Private Equity nor any other person or group within the Murray Johnstone Group has authority to make decisions on behalf of the MJL Jersey Subsidiary or the LBO Fund. As the Directors conduct all of the activities of the MJL Jersey Subsidiary that are not delegated to the Fund Administrator, the MJL Jersey Subsidiary has no full-time employees. Under its contracts with the Fund Administrator and Murray Johnstone, the MJL Jersey Subsidiary pays each of Murray Johnstone and the Fund Administrator a fee and can terminate the contract for either of the Fund Administrator's or Murray Johnstone's services. The Directors of the MJL Jersey Subsidiary can use information in their investment decision-making process other than information supplied by Murray Johnstone.

The MJL Jersey Subsidiary contracts for investment advice from the venture capital team (the "Venture Capital Team") within Murray Johnstone. The Venture Capital Team is controlled and managed by Private Equity. Private Equity is the vehicle responsible for the venture capital operations within the Murray Johnstone Group. The Venture Capital Team reports to the Board of Directors of Private Equity and is subject to Private Equity's management and control. The Board of Directors of Private Equity is comprised of 12 people, nine of whom are members of the Venture Capital Team and three of whom are senior directors of Murray Johnstone. The Board of Private Equity meets quarterly, although each investment proposal is circulated as it comes up to all directors. Investment recommendations absent a Board meeting may be approved by a subcommittee of the Board of Private Equity consisting of two directors from the Venture Capital Team and one director who is a senior director of Murray Johnstone. That subcommittee meets as required.

The activities of the Venture Capital Team and Private Equity are separated from the remainder of Murray Johnstone and the rest of the Murray Johnstone Group through formal "Chinese wall" procedures. These procedures are in effect to prevent the possibility that privileged or price-sensitive information known to members of the Venture Capital Team become known to those within the Murray Johnstone Group responsible for managing quoted investment portfolios. The Venture Capital Team is the only part of the Murray Johnstone Group that advises on venture capital investments. Because MJL has only quoted investment advisory operations and no venture capital advisory operations, there is a Chinese wall in place between the Venture Capital Team and MJL. Although the three Murray Johnstone senior directors mentioned above are on the MJL Board there are no members of the Venture Capital Team on the MJL Board. Four directors of Private Equity who are members of the Venture Capital Team

are also directors of Murray Johnstone. Other than the three senior directors of Murray Johnstone mentioned above who sit on the Board of Private Equity, no employee of the Murray Johnstone Group outside of the Venture Capital Team has knowledge of the Venture Capital Team's advice before it is rendered to its clients, including to the MJL Jersey Subsidiary. There is one safety mechanism in the Chinese wall procedures that for regulatory compliance allows the Venture Capital Team to order, without giving specific details, other sectors of the Murray Johnstone Group to not trade in particular securities because of activities that the Venture Capital Team is recommending or contemplating if there is a risk that anyone in the Murray Johnstone Group outside the Venture Capital Team could benefit by such trading. Because of the nature of venture capital, the investments of the Venture Capital Team -- which are illiquid and non-public in nature -- are not available to others in the Murray Johnstone Group or their clients.

The Murray Johnstone Group propose that the MJL Jersey Subsidiary continue to be the General Partner of the LBO Fund under its current terms without registering as an investment adviser (continuing to rely on the exemption from registration set forth in Section 203(b)(3) of the Advisers Act or on another exemption from registration) or being deemed a Participating Affiliate of MJJ. In addition, the Murray Johnstone Group propose that any other entity within the Murray Johnstone Group other than MJJ and Participating Affiliates be able to solicit and have U.S. clients so long as an exemption from registration under the Advisers Act is available to it and as long as such entity is operated separately from MJJ and the Participating Affiliates. Each such entity soliciting or having U.S. clients would register under the Advisers Act if an exemption from such registration were not available and would register under the Advisers Act or become a Participating Affiliate if it were not operated separately from MJJ and the other Participating Affiliates. Any such member that does so register would be treated as MJJ is treated in this request letter. For example, the MJL Jersey Subsidiary would continue to be able to provide investment advisory services to its client fund so long as it can rely on the exemption from registration set forth in Section 203(b)(3) of the Advisers Act or on another exemption from registration.

We hope the Staff will agree that the fact that the operations of the Murray Johnstone Group may be organized as described in this letter and in reliance on no-action assurances of the type given in Unibanco, NMG, MAM and Kleinwort should not preclude entities within the Murray Johnstone Group other than MJJ and Participating Affiliates from availing themselves of exemptions from the requirements of the Advisers Act that are available to other persons. The anomalous effect of this preclusion would be to close a foreign adviser's access to the U.S. market -- access available to other foreign advisers -- simply because it has an affiliate that is a U.S.-registered adviser.

Request No. 2: Foreign Clients of MJJ

Based on the Staff's position in NMG, the Murray Johnstone Group propose that MJJ be able to advise foreign clients solely in accordance with foreign law without complying with the provisions of the Advisers Act, and in particular without complying with the record-keeping and other provisions specified in Request No. 2, so long as such activities do not constitute conduct within the territory of the United States and do not have and are not intended to have substantial effects within the United States. We believe this is consistent with the conduct and effects analysis. As stated in the discussion of Request No. 1(b) above, in NMG the Staff stated that the substantive provisions of the Advisers Act generally need not govern the relationships between an investment adviser located outside the United States and its foreign clients, even though the adviser has registered under the Advisers Act, unless the adviser's activities with foreign clients involve conduct or effects in the United States. E. Undertakings for Requests Nos. 1 and 2

As part of Requests Nos. 1 and 2 set forth in this request letter, MJ Holdings, Murray Johnstone and MJJ hereby make the undertakings stated below.

1. MJJ will comply in all respects with all the requirements of the Advisers Act with respect to its United States clients.
2. MJJ will maintain all books and records in accordance with Rule 204-2 under the Advisers Act with respect to foreign clients except as specifically stated in this letter.

3. MJI will promptly provide to the Commission or the Staff upon receipt of an administrative subpoena, demand, or request for voluntary cooperation made during a routine or special inspection or otherwise, any and all books and records undertaken to be kept herein.
4. MJI will promptly make available for testimony before, or other questioning by, the Commission 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 of its personnel, with the exception of clerical or ministerial personnel.
5. MJI will list on its Form ADV (a) all directors of MJI and each investment manager of MJI (whether or not also a director of MJI) who provides advice to United States clients, and (b) 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.
6. MJI will not hold itself out to foreign clients as being registered under the Advisers Act. Where communications are sent to both United States and foreign clients, (i) separate communications will be sent, (ii) references to MJI's registration under the Advisers Act will be deleted in communications with foreign clients, or (iii) the communication with foreign clients will make clear that MJI will be complying with the Advisers Act only with respect to United States clients.
7. Any advice given to United States persons from Participating Affiliates will be given through MJI or through employees of such Participating Affiliates participating in MJI's U.S. advisory business.
8. Unregistered entities within the Murray Johnstone Group other than Participating Affiliates will have United States clients only if such entities are exempt from registration under the Advisers Act.
9. MJI will deem as an "associated person" each Participating Affiliate and each employee of the Participating Affiliate, including research analysts, whose functions or duties relate to the determination and recommendations that MJI makes to its United States clients, or who has access to any information concerning which securities are being recommended to MJI's United States clients prior to the effective dissemination of the recommendations (including dealing room personnel, if trades for MJI clients are placed for execution with any affiliate of MJI).
10. Employees of the Murray Johnstone Group who maintain or have access to MJI's records will be treated as "advisory representatives" of MJI. All persons deemed to be "associated persons" of MJI in accordance with Undertaking No. 9 will also be treated as "advisory representatives" of MJI.
11. The Participating Affiliates will keep books and records of the type described in Rules 204-2(a)(1), (2), (4), (5) and (6) of 204-2(c) for all transactions. With respect to transactions involving United States clients and all related transactions, 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(12) for all "advisory representatives" (as defined in Rule 204-2(a)(12)(A)) of the Participating Affiliates who are involved in giving advice to United States clients. All 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.
12. 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 Staff any and all of the books and records described in paragraph 10 above, and make available for testimony before, or other questioning by, the Commission or the Staff any and all personnel (other than clerical or ministerial personnel) identified by the Commission, the Staff, MJI 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 foreign clients). Participating Affiliates will not (except with respect to the identity of foreign clients) contest the validity of administrative subpoenas for testimony or documents under any laws or regulations other than those of the United States.

13. Each Participating Affiliate (i) will submit to the jurisdiction of the United States courts for actions arising under the United States securities laws in connection with investment advisory activities for United States clients of MJJ, 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 MJJ and/or the Participating Affiliate or to which MJJ 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 MJJ investment advisory activity. No Participating Affiliate will provide investment advice to United States clients through MJJ until documents effecting the appointment of an agent have been filed by the Participating Affiliate with the Commission substantially in the form attached hereto as Exhibit A.

F. Discussion of Request No. 3

Request No. 3: "Related Persons" under the Rule 203(b)(3) Exemption

As stated above, the MJJ Jersey Subsidiary relies on the "private adviser" exemption from registration under the Advisers Act under Section 203(b)(3) of the Advisers Act and Rule 203(b)(3)-1 thereunder.

Upon UAM's acquisition of MJ Holdings, under Rule 203(b)(3)-1(a)(1) UAM, each of UAM's 35 other Affiliates and each entity controlled by each Affiliate became a "related person" of the MJJ Jersey Subsidiary, such that, under a strict application of Rule 203(b)(3)-1(a)(3), any limited partner in the LBO Fund that is also an investment advisory client of any of these "related persons" would have to be counted separately to determine whether the MJJ Jersey Subsidiary has fewer than 15 clients in order to qualify for the private adviser exemption. It is very possible that a limited partner of the LBO Fund is also an investment advisory client of some entity within the broad network of independent advisers assembled by UAM, in that such limited partners are substantial institutional investors with a wide range of advisers.

This causes the MJJ Jersey subsidiary to face the possibility of inadvertently having, by attribution, 15 or more advisory clients, causing it to lose the private adviser exemption. We believe that, because of the independence given to UAM's subsidiaries under its business plan as described below, such a strict application of Rule 203(b)(3)-1(a)(3) is not warranted. n17

1. UAM

The following information is quoted from a letter to MJ Holdings shareholders from the Chairman of the Board of Directors of MJ Holdings (the "Board") contained in the document entitled "Recommended Offer", dated September 21, 1993 (the "Offer Document"), pursuant to which UAM acquired MJ Holdings:

UAM is a successful investment management group, based in Boston, Massachusetts, and listed on the New York Stock Exchange. It specializes in acquiring and holding companies engaged in institutional investment management. Currently UAM holds 35 such companies (known as "Affiliates") located mainly throughout the United States. [MJ Holdings] would be the largest Affiliate of UAM outside the United States. Each Affiliate operates independently under its own name and under its own management. UAM's philosophy is not to involve itself directly in the operational management of any Affiliate. The Board considers that if [MJ Holdings] were to become an Affiliate of UAM it would continue to enjoy the freedom of an independent investment management company, headquartered in Glasgow, maintaining autonomy in its operations.

The following information was contained in the Offer Document and was extracted from UAM's Annual Report on Form 10K filed with the Commission for the fiscal year ended December 31, 1992 and UAM's second quarter 1993 report on Form 10Q ("UAM's Public Reports"):

UAM is a holding company organized in December, 1980 to acquire and to own firms engaged primarily in institutional investment management. UAM seeks to achieve diversity by acquiring investment management firms having different investment philosophies and strategies and specializing in different asset classes. UAM intends to grow both through the growth of the present Affiliates and through the acquisition or organization of additional firms in the future.

Once acquired, each Affiliate continues to operate under its own name, with its own leadership and individual investment philosophy and approach. UAM seeks to preserve each Affiliate's autonomy by allowing its key employees to retain control of investment decisions and day-to-day operations. Where the Affiliate is acquired from its employee stockholders, the former stockholders receive the added benefits of a more diversified company by virtue of their equity ownership in UAM.

Each of the Affiliates conducts its own investment analysis, portfolio selection, research, marketing, and client relations. During any given period, investment results may vary among firms. Each firm competes independently and sets its client fees based on its own judgment concerning the market for the services it renders. Each firm is separately registered under the Investment Advisers Act of 1940 and applicable state advisers acts. Each of the Affiliates may compete with the other Affiliates for clients.

UAM has established revenue sharing agreements which provide for UAM to derive increased or decreased income from each Affiliate, based on a percentage of change in each Affiliate's revenues from year to year, starting from a base amount agreed upon in the year of acquisition. These arrangements allow each Affiliate to set its own operating expense budget and compensation practices, limited by the share of the Affiliate's revenue available to it.

Each Affiliate's directors and officers are responsible for reviews of their respective firm's results, plans and budgets. UAM also has a Management Council composed of senior executives from each of the Affiliates and from UAM. The Management Council reviews overall business results and serves as a forum for sharing business information.

UAM itself does not manage portfolio investments for clients and does not provide any investment advisory services to Affiliates and therefore is not registered as an adviser under federal or state laws. UAM respects the individual character of each Affiliate and seeks to preserve an environment in which each firm may continue to provide investment management services which are intended to meet the particular needs of each Affiliate's clients. UAM's name does not appear on the office doors of any Affiliate. UAM provides assistance to the Affiliates in connection with the preparation of consolidated financial statements, consolidated tax matters, insurance and maintenance of a company-wide profit sharing retirement plan.

UAM believes that the professional independence of the Affiliates and the continuing diversification of investment philosophies and approaches within UAM's group are necessary ingredients of UAM's success and that of Affiliates. The key employees of each Affiliate at the time of acquisition by UAM have continued with their firm in each acquisition, have remained on their firm's board of directors, and have continued to serve as its executive officers. UAM intends to continue the method of operation described above as it acquires or organizes additional firms.

2. The United Asset No-Action Letter

In a 1981 letter to the Staff (the "UAM Request Letter"), UAM, soon after its organization, requested a no-action letter based on its business plan. In the ensuing no-action letter, United Asset Management Corporation (pub. avail. November 2, 1981) ("United Asset"), the Staff gave its assurance that, inter alia, it would not recommend enforcement action to the Commission if UAM proceeds with its organization and implementation of its business plan without registering under the Advisers Act in

reliance upon an opinion of counsel that UAM would not be doing indirectly through its affiliates what it could not do directly without registering under the Advisers Act.

In the UAM Request Letter UAM described its business plan as follows:

The goal of UAM is to create the first large, diversified public holding company engaged through its Affiliates [as defined above] in the institutional investment management business. In this way, UAM expects to permit investors to participate in this rapidly growing industry and will enable proprietors of existing smaller, non-diversified, private firms to capitalize on the growth and success which they have achieved. Except for meeting certain profitability and growth objectives, the individual firms will operate independently as creative, people-oriented, service businesses.

Day to day operating responsibility and decision making must remain with the individual firm. UAM believes that the establishment of centralized control of day to day operation is undesirable in the investment management business and this is not called for in the plan.

The principals of the firm should plan to remain active and in control of their organization. If and when they plan to retire, orderly succession must be established from within each firm. Each firm must determine its own investment policy and strategy and retain its individual identity with its clients. This is essential if it is to do a good investment job and create the basis for future growth.

As described in UAM's Public Reports, UAM's activities since its organization have been substantially in accordance with the business plan with respect to which no-action relief was granted in United Asset.

We believe that the Staff's underlying reasoning in granting no-action relief to UAM was that, based on the facts, the portfolio investment management firms would be sufficiently independent from the unregistered parent, UAM, to conclude that the unregistered parent was not attempting to use its portfolio investment management firms to do indirectly what it, as an unregistered entity, could not do directly under the Advisers Act.

3. Effect of the Acquisition of MJ Holdings by UAM in light of United Asset

UAM has advised us that as the parent company of MJ Holdings it will allow the Murray Johnstone Group to operate as its own investment management group independent of the other investment managers in UAM's portfolio in accordance with UAM's operations as described in UAM's Public Reports, and that UAM will not be attempting to use the Murray Johnstone Group to do indirectly what UAM can not do directly under the Advisers Act.

We believe that a strict application of Rule 203(b)(3)-1(a)(1) and (3) to the Murray Johnstone Group is not warranted because of the independence of the Murray Johnstone Group from UAM and UAM's other portfolio firms. The purpose of these subsections of the Rule is to prevent investment advisers who rely upon the private issuer exemption from aggregating existing clients in a limited partnership and then advising the limited partnership in order to have such aggregated clients be counted as only one client (i.e., the limited partnership), which would thereby maintain the private issuer exemption for the adviser. In this case the UAM group is not a single investment advisory group with a single set of clients, and it is not trying to manipulate clients in order to qualify for an exemption from registration. Rather, the UAM group other than the Murray Johnstone Group consists of 35 independent investment advisers, each with its own clients, its own management and its own investment advice. There is no danger that UAM is seeking improperly to obtain the private issuer exemption, or that UAM is otherwise seeking to do indirectly through the Murray Johnstone Group what it can not do directly. Nor is there any danger that the Murray Johnstone Group is organizing its own acquisition in order to improperly maintain the private issuer exemption.

Because of the nature of the Murray Johnstone Group's independence from UAM and UAM's other portfolio firms, we believe that in determining whether the MJL Jersey subsidiary have fewer than 15 clients the definition of "related person" under Rule 203(b)(3)-1 should be applied only within the

Murray Johnstone Group itself. We therefore request assurance that the Staff would not recommend enforcement action to the Commission if the MJL Jersey Subsidiary does not register as an investment adviser in reliance on the Rule 203(b)(3) exemption, based upon the inclusion of only entities within the Murray Johnstone Group among "related persons" within the meaning of Rule 203(b)(3)-1(a)(1) and (3).

For the reasons set forth above, we respectfully request your assurances as stated in the first paragraph of this request letter.

If you have any questions regarding this request for assurance, please contact Albert Francke at (212) 696-6010 or Robert E. Stemmons at (011-44-71) 638-7957.

Very truly yours,

Albert Francke

Footnotes

n1 For purposes of this request letter, the term "United States clients" means those persons included within the definition of "U.S. person" set forth in Section 902(o) of Regulation S under the Securities Act of 1933, as amended, and members of identifiable groups of United States citizens abroad such as members of the United States armed forces serving overseas.

n2 For purposes of this request letter, the term "foreign clients" means those persons who are not United States clients.

n3 The Murray Johnstone Group understand "related securities transaction" to be interpreted broadly by the Staff.

n4 Seven other of such subsidiaries are wholly owned. They are, with their jurisdictions of organization and the areas in which they principally conduct activities: Murray Johnstone Unit Trust Management Limited, Scotland, unit trusts; Murray Johnstone (Jersey) Limited, Jersey, venture capital, property and investment trust management; Murray Johnstone Private Equity Limited, Scotland, venture capital; Murray Johnstone Investment Trust Management Limited, Scotland, investment trusts; Murray Johnstone Asset Management Limited, Scotland, pension funds; Murray Johnstone Europe Limited, Scotland, a non-trading subsidiary; and BIG (General Partner) Limited, Scotland, venture capital. The other four of such subsidiaries, with their jurisdictions of organization, the areas in which they principally conduct activities and their percentage ownership by Murray Johnstone, are: Embankment Management Limited, Scotland, property, 66.67%; Murray Johnstone Personal Asset Management LTD, Scotland, United Kingdom private clients, 60%; Murray Avenir Finance SA, France, venture capital, 50%; and Euractions Management Limited, Scotland, venture capital, 50%.

n5 The subsidiaries regulated by IMRO are Murray Johnstone Personal Asset Management Limited and BIG (General Partner) Limited. The subsidiary regulated by IMRO and LAUTRO is Murray Johnstone Unit Trust Management Ltd.

n6 In a no-action letter issued April 17, 1987, the Staff assured Murray Johnstone that the Staff would not seek enforcement action under Section 203 if Murray Johnstone organized the MJL Jersey Subsidiary and the entities operated as described in Murray Johnstone's request for such no-action letter.

n7 In Richard Ellis the Division permitted a foreign investment adviser to avoid subjecting all of its operations to the Advisers Act by forming a separate and independent subsidiary to provide advice to United States clients. Under the Division's position in Richard Ellis, a subsidiary will be "regarded as having a separate, independent existence and to be functioning independently of its parent", thereby permitting the foreign parent to remain unregistered, only if the subsidiary: (1) is adequately

capitalized; (2) has 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) 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) 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 its parent; and (5) keeps its investment advice confidential until communicated to its clients.

n8 In a no-action letter issued October 3, 1980, the Staff assured Murray Johnstone that the Staff would not seek enforcement action if Murray Johnstone did not register under the Advisers Act as a result of activities conducted by a joint venture controlled by Murray Johnstone which would be registered under the Advisers Act. This no action letter became part of line of no action letters leading to Richard Ellis.

n9 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).

n10 Under a conduct test, conduct that takes place in the United States, wholly or in substantial part, would be sufficient to justify application of the securities laws. See, e.g., *Leasco Data Processing Equip. Corp. v. Maxwell*, 463 F.2d 1326 (2d Cir. 1972); *Continental Grain (Australia) Pty. Ltd. v. Pacific Oilseeds, Inc.*, 592 F.2d 409, 421 (8th Cir. 1979) (misrepresentations made in the United States for securities transactions consummated abroad). Under an effects test, the securities laws would be applied to conduct outside the territory of the United States that has or is intended to have substantial effects within the United States. See, e.g., *Consolidated Gold Fields, PLC v. Minorco, S.A.*, 871 F.2d 252 (2d Cir. 1989), *Barsch v. Drexel Firestone*, 519 F.2d 974, 993 (2d Cir.), cert. denied, 423 U.S. 1018 (1975); *Schoenbaum v. Firstbrook*, 405 F.2d 200 (2d Cir.), rev'd on other grounds, 405 F.2d 216 (2d Cir. 1968) (en banc), cert. denied, 395 U.S. 905 (1969).

n11 Under Section 202(a)(17) of the Advisers Act, persons associated with an investment adviser include "any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser . . . [but not] persons . . . whose functions are clerical or ministerial . . ." The Advisers Act imposes certain obligations on a registered investment adviser with respect to associated persons. See, e.g., Sections 203(e)(5) and 204A. MJI is obliged to monitor the activities of associated persons. See, e.g., Sections 203(e)(5) and 204A of the Advisers Act.

n12 Also in NMG and MAM, the Staff stated that it would look to Rule 902(o) of Regulation S under the Securities Act of 1933, as amended, for guidance in interpreting "United States person". This has led to the definitions given to "United States client" and "foreign client" in this request letter (see note 1).

n13 See Undertaking No. 9, below, for persons who will be deemed "associated persons" of MJI.

n14 And Private Equity, as described in the discussion of Request No. 1(d), below.

n15 And Private Equity, as described in the discussion of Request No. 1(d), below.

n16 Such entity would be operated separately in accordance with the Staff's position in Prudential Bache Special Situation Fund (pub. avail. Oct 8, 1984).

n17 Based on the nature of this independence, we believe that the acquisition of MJ Holdings by UAM does not affect Requests Nos. 1 and 2 set forth in this letter.