PUBLIC

ACT IAA of 1940
SECTION 203(a)
RULE
PUBLIC AVAILABILITY JUN 3 1998

June 3, 1998
Our Ref. No. 98-240-CC
[1]Royal Bank of Canada;
[2]Royal Bank of Canada Investment Management (UK) Limited; and
[3]Royal Bank of Canada Investment Management (USA) Limited
File No. 801-55108

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter dated June 2, 1998 requests our assurance that we will not recommend enforcement action to the Commission if Royal Bank of Canada ("Royal Bank"), Royal Bank of Canada Investment Management (UK) Limited ("Royal Bank Investment Management"), or other subsidiaries of Royal Bank provide investment advice to U.S. clients in the manner set forth in your letter, without registering under the Investment Advisers Act of 1940 ("Advisers Act"). You also request our assurance that we will not recommend enforcement action to the Commission if Royal Bank of Canada Investment Management (USA) Limited (the "Registered Adviser"), a subsidiary of Royal Bank Investment Management, or other Royal Bank affiliates of the Registered Adviser, provide investment advice to foreign clients in accordance with applicable foreign law and without complying with the Advisers Act, except as provided in your letter.

Background

Royal Bank is a banking institution organized under the laws of Canada. Royal Bank and its subsidiaries (the "Royal Bank Financial Group") provide private banking and wealth management services, including investment management, trust and custody services, mutual funds, private client services of Royal Bank's brokerage subsidiary, RBC Dominion Securities Inc., and discount brokerage services.

Royal Bank provides trust services through a number of non-depository trust company subsidiaries organized and located in Europe and the Caribbean (collectively the "Royal Trust Companies").[1] Services of the Royal Trust Companies are marketed to individuals in the United States for estate or financial planning purposes. The Royal Trust Companies act as trustee ("Trustee") to trusts established by U.S. residents under the laws of the Royal Trust Companies' home countries ("Offshore Trusts"). You represent that the Offshore Trusts are regarded under the laws of the Royal Trust Companies' home countries as establishing a bona fide fiduciary relationship and vesting in the Trustee full legal ownership, rights, powers, duties and privileges in and over the trust property. You

[1] The Royal Trust Companies include: (i) Royal Bank of Canada Trust Company (Jersey) Limited; (ii) Royal Bank of Canada Trustees (Guernsey) Limited; (iii) Royal Trust (Bermuda) Limited; and (iv) Royal Bank of Canada Trust Company (Cayman) Limited.

state that each Royal Trust Company, as Trustee, is authorized under the laws of its home country to provide investment advice to the Offshore Trusts that it administers, and to possess and exercise investment discretion over the assets of the trusts. You state that under the laws of certain of the home countries, a question concerning the valid existence of a trust may arise if the trustee does not possess and exercise some authority over the investment of the trust assets, such as the power to appoint and remove third-party investment advisers. You state that none of the Royal Trust Companies is registered as an investment adviser under the Advisers Act.

The Registered Adviser has been organized as a wholly owned, United Kingdom subsidiary of Royal Bank Investment Management for the purpose of providing investment advice to the Offshore Trusts, as well as to other individual and institutional clients located in the United States that do not establish Offshore Trusts. You contemplate that those clients who do not establish Offshore Trusts will establish accounts over which the Registered Adviser will render investment advice on a discretionary basis ("RBIM Accounts").

Proposals

U.S. Clients

You propose that the Registered Adviser's affiliates be permitted to participate in the U.S. investment management business of the Registered Adviser without the affiliates themselves registering as investment advisers under the Advisers Act. Specifically, you propose that officers and employees of Royal Bank and its subsidiaries that participate in the Royal Bank Financial Group's investment management activities be able to communicate with one another and the Registered Adviser concerning the investment advice to be given by the Registered Adviser to its U.S. Clients[2] before such advice is effectively disseminated. You represent that such officers or employees would be deemed to be "associated persons" of the Registered Adviser, and any entity employing such persons would be deemed to be a participating affiliate ("Participating Affiliate"), and therefore subject to the undertakings set forth in your letter.[3]

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[2] For purposes of your letter, you define "U.S. Clients" as (i) the Offshore Trusts, (ii) the RBIM Accounts, and (iii) any U.S. person as defined in Regulation S under the Securities Act of 1933 ("Securities Act"). You note that the Commission has not definitively stated what constitutes a U.S. client for purposes of the Advisers Act. The staff, however, has looked to the definition of U.S. person in paragraph 902(k) of Regulation S under the Securities Act for guidance in interpreting the meaning of U.S. client in its responses to similar no-action requests. See, e.g., ABN AMRO Bank, N.V. (pub. avail. July 1, 1997) ("ABN AMRO") at n.4; Murray Johnstone Holdings Limited (pub. avail. Oct. 7, 1994) ("Murray Johnstone") at n.6.

[3] You represent that initially the following entities will be deemed Participating Affiliates: (i) Royal Bank of Canada (Suisse); (ii) Royal Bank of Canada Investment Management (Guernsey) Limited; (iii) Royal Bank of Canada (Caribbean) Corporation;

In addition, you propose that the Participating Affiliates, the Royal Trust Companies and the Registered Adviser be able to share personnel ("Dual Employees"). You represent that Dual Employees participating in the Registered Adviser's investment advisory activities with respect to its U.S. Clients or having access to any information concerning the securities recommended to its U.S. Clients prior to the effective dissemination of the recommendations will be deemed to be "associated persons" of the Registered Adviser. You represent that investment advice from Participating Affiliates will be provided either directly through the Registered Adviser or by the dedication of personnel of the Participating Affiliates to the Registered Adviser. You further represent that all personnel will make clear in all communications with the Registered Adviser's U.S. Clients that they are acting for and on behalf of the Registered Adviser.

The Registered Adviser proposes to provide investment advice to the Offshore Trusts, as well as to other clients that establish RBIM Accounts. As noted above, each Royal Trust Company as Trustee is legally authorized to provide investment advice to the Offshore Trusts that it administers, and to exercise investment discretion over the assets of the trusts. In connection with this authority, however, the Royal Trust Companies propose to delegate investment discretion over the assets held by such Offshore Trusts to the extent related to or involving securities or activities constituting investment advice within the meaning of the Advisers Act, to either (i) the Registered Adviser or (ii) an unaffiliated registered investment adviser.[4] In the event that the Trustee delegates investment discretion to an unaffiliated registered investment adviser, the Trustee will retain the Registered Adviser to monitor the performance of the unaffiliated registered investment adviser and will select, retain, remove, approve or recommend such unaffiliated registered adviser based upon and consistent with the recommendations of the Registered

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(iv) RBC Investment Management (Asia) Limited; (v) Royal Bank of Canada Investment Management (UK) Limited; and (vi) Royal Bank of Canada Trust Company (Jersey) Limited. You represent that to the extent that any officer or employee of a Royal Trust Company communicates with the Registered Adviser regarding the investment recommendations or advice to be given to any U.S. Client other than the Offshore Trusts administered by such Royal Trust Company, including any Offshore Trust administered by any other Royal Trust Company, then such Royal Trust Company would be deemed a Participating Affiliate and any officer or employee of such Royal Trust Company having knowledge of such investment recommendations or advice before the effective dissemination to the client would be deemed an "associated person" of the Registered Adviser. In addition, you represent that the Registered Adviser will treat all personnel of the Royal Trust Companies who have access to any information concerning which securities are being recommended to U.S. Clients prior to the effective dissemination of the recommendations as "advisory representatives" (as defined in Rule 204-2(a)(12)(A)) of the Registered Adviser.

[4] You state that in the absence of a request by the settlor of an Offshore Trust to select, retain, remove, approve or recommend an unaffiliated investment adviser, the Trustee will name the Registered Adviser as the investment adviser to the Offshore Trust.

Adviser. You propose that each Royal Trust Company as Trustee be able to conduct these services without registering under the Advisers Act. You represent that the Trustees will exercise their fiduciary duties only in conformity with the undertakings made in your letter.

Foreign Clients

You also propose that in the event that the Registered Adviser seeks to act as an investment adviser for Foreign Clients,[5] it will do so solely in accordance with applicable foreign law without complying with the Advisers Act, as specified in your letter,[6] so long as such activities do not constitute conduct, or have effects, within the United States. You further propose that the Participating Affiliates be permitted to provide investment advice to Foreign Clients solely in accordance with applicable foreign law without being required to register under the Advisers Act, as long as such activities do not constitute conduct, or have effects, within the United States.

Analysis

U.S. Clients

Section 203(a) of the Advisers Act requires the registration of any investment adviser that uses the U.S. mails or any means or instrumentalities of interstate commerce in connection with its business as an investment adviser, unless the adviser is exempt from registration under Section 203(b) or excluded from registration with the Commission pursuant to Section 203A of the Advisers Act. The staff has stated that it will not recommend enforcement action to the Commission under Section 203(a) if a foreign investment advisory affiliate of a registered investment adviser does not register under the Advisers Act where: (1) the registered and unregistered entities are separately organized (i.e., each is a distinct entity); (2) the registered adviser is staffed with personnel (whether located in the United States or abroad) who are capable of providing investment advice; (3) all persons who provide advice to U.S. clients or have access to any information concerning securities to be recommended to U.S. clients prior to the effective dissemination of the recommendations are deemed to be "associated persons"[7] of the registered adviser; and (4) the Commission has access to trading and other records of the

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[5] You define "Foreign Client" as any person that is not a U.S. Client, i.e., any person that is neither an Offshore Trust, RBIM Account nor a U.S. person.

[6] See Request III.A.B. of your letter.

[7] See Sections 202(a)(17) and 204A of the Advisers Act. A registered investment adviser may be subject to sanctions by the Commission for failing reasonably to supervise the activities of its associated persons who are subject to its supervision, and for failure to implement procedures designed to prevent its associated persons from violating certain federal securities laws. See, e.g., Section 203(e)(6) of the Advisers Act.

affiliate involved in, or having access to, U.S. advisory activities, and to the affiliate's personnel (including the trading records of such personnel), to the extent necessary to monitor and police conduct that may harm U.S. clients or markets.[8]

In your letter, you make a series of representations that are designed to address the concerns raised when an investment advisory affiliate of a registered investment adviser does not register under the Advisers Act. Except with regard to the activities of the Royal Trust Companies, these representations are substantially similar to representations made to the staff in prior no-action requests.[9] You believe that the representations made in your letter will provide the Commission with the necessary means to monitor the activities of the Participating Affiliates and the Royal Trust Companies with regard to the Registered Adviser's U.S. Clients, and police any conduct that may harm U.S. persons or markets.

With respect to the activities of the Royal Trust Companies, you note that the staff has expressed the view that a foreign trustee may be engaged in the business of rendering investment advice for purposes of the Advisers Act when it exercises investment discretion over the assets of trusts that it administers.[10] We also note that a person providing advice to a client as to the selection or retention of an investment manager may meet the definition of an "investment adviser" in Section 202(a)(11) of the Advisers Act.[11] You acknowledge that the Commission has an interest in monitoring the activities of the Royal Trust Companies and the Registered Adviser to protect U.S. persons and the integrity of U.S. markets. You believe, however, that given the fiduciary nature and limited scope of the Royal Trust Companies' proposed activities, and the representations contained in your letter, the Commission will be able to protect U.S. persons and the integrity of U.S. markets without requiring the Royal Trust Companies to register as investment advisers under the Advisers Act. You also believe that no meaningful regulatory purpose would be served by requiring the Registered Adviser to deem the Royal Trust Companies to be "associated persons," except as described in your letter.[12]

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[8] Murray Johnstone, supra note 2.

[9] Id. See also Kleinwort Benson Investment Management Limited (pub. avail. Dec. 15, 1993) ("Kleinwort Benson"); Mercury Asset Management plc (pub. avail. Apr. 16, 1993); The National Mutual Group (pub. avail. Mar. 8, 1993); and Uniao de Bancos de Brasilerios S.A. (pub. avail. July 28, 1992). You represent that, with the exception of your request concerning the activities of the Royal Trust Companies as Trustees to the Offshore Trusts, the activities proposed in your letter are similar in all material respects to the activities described in Murray Johnstone.

[10] See Philip Eiseman (pub. avail. July 22, 1976); Brewer-Burner Associates Inc. (Feb. 7, 1974).

[11] See Investment Advisers Act Release No. 1092 (Oct. 8, 1987).

[12] See, e.g., note 3 and accompanying text, supra. You also represent that the Registered Adviser will deem as an associated person each officer or employee of a Royal

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 under Section 203(a) of the Advisers Act against the Registered Adviser or its Participating Affiliates if the Participating Affiliates do not register under the Advisers Act and if they share certain personnel with the Registered Adviser, and provide certain services to U.S. Clients, under the circumstances described in your letter. Additionally, 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 under Section 203(a) against the Royal Trust Companies if they do not register under the Advisers Act in connection with the activities described in your letter.

Foreign Clients

You note that the Division has determined that the substantive provisions of the Advisers Act generally should not govern the relationship between an investment adviser located outside of the United States and its foreign clients, provided that the activities of such an adviser do not involve conduct, or give rise to effects, within the United States. You state that under your proposal, Royal Bank, the Participating Affiliates, the Royal Trust Companies and the Registered Adviser will not comply, with respect to Foreign Clients, with certain requirements of the Advisers Act, provided that their activities do not involve conduct, or give rise to effects, within the United States. It is your view that the scope of your request is consistent with the current position of the staff concerning the extraterritorial application of the Advisers Act.

On the basis of the facts and representations in your letter, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action under Section 203(a) of the Advisers Act against Royal Bank, the Royal Trust Companies, the Registered Adviser and the Participating Affiliates if they provide investment advisory services to their Foreign Clients solely in accordance with applicable foreign law except as specified in your letter, provided that their activities do not involve conduct or effects in the United States.

Representations

The positions expressed in this response are based upon the facts and representations in your letter, which because of their importance are restated below.

Trust Company whose functions are not purely clerical or ministerial in nature and who is involved in formulating or having access to recommendations concerning or effecting delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of an investment adviser to an Offshore Trust.

Representations of the Registered Adviser

1. The Registered Adviser will comply in all respects with the requirements of the Advisers Act with respect to the U.S. Clients.

2. The Registered Adviser will maintain all books and records in accordance with Rule 204-2 under the Advisers Act with respect to Foreign Clients except as specifically requested in Request III.A.B. of your letter.

3. The Registered Adviser 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 your letter to be kept and those required by foreign law to be kept.

4. The Registered Adviser 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.[13]

5. The Registered Adviser will list on its Form ADV and any brochure provided to U.S. Clients pursuant to Rule 204-3 under the Advisers Act (i) all directors of the Registered Adviser and each portfolio manager of the Registered Adviser (whether or not also a director of the Registered Adviser) who provides investment advice to U.S. Clients, and (ii) the names of all individuals and Participating Affiliates involved in generating or having access to investment advice to be used for or on behalf of U.S.

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[13] We note that similar representations made to the staff in prior no-action requests did not require clerical or ministerial personnel to be made available for testimony before, or other questioning by, the Commission or its staff. See, e.g., ABN AMRO, supra note 2; Murray Johnstone, supra note 2; Kleinwort Benson, supra note 9. Upon reconsideration, we believe that the Commission's ability to obtain testimony from, or question, such personnel may assist the Commission in protecting U.S. persons and the integrity of the U.S. markets. This letter therefore supersedes prior no-action letters to the extent that those letters excluded clerical and ministerial personnel from these undertakings. To facilitate an orderly transition to its current position, the staff will not recommend enforcement action to the Commission for a period of one year from the date of this letter if persons to whom the staff previously issued no-action letters continue to rely on them. At the end of that period, the staff will continue to not recommend enforcement action to the Commission only if persons relying on prior letters make clerical and ministerial personnel available for testimony before, or other questioning by, the Commission or its staff upon receipt of an administrative subpoena, demand, or a request for voluntary cooperation made during a routine or special inspection or otherwise.

Clients and the required biographical and ownership information for all such individuals and Participating Affiliates.

6. The Registered Adviser will not hold itself out to Foreign Clients as being registered under the Advisers Act. When communications are sent both to U.S. Clients and Foreign Clients, (i) separate communications will be sent, (ii) references to the Registered Adviser's registration under the Advisers Act will be deleted in communications with Foreign Clients, or (iii) the communications with Foreign Clients will make clear that the Registered Adviser will be complying with the Advisers Act only with respect to U.S. Clients.

7. The Registered Adviser will deem as an "associated person" each Participating Affiliate and each employee of a Participating Affiliate, including research analysts, whose functions or duties relate to the determination and recommendations that the Registered Adviser makes to its U.S. Clients, or who has access to any information concerning which securities are being recommended to U.S. Clients prior to the effective dissemination of the recommendations (including dealing room personnel, if trades for U.S. Clients are placed for execution with any affiliate of the Registered Adviser).

8. (i) The Registered Adviser will make clear in any communications between the Dual Employees and its U.S. Clients that the communications are from the Registered Adviser, not any Participating Affiliate; (ii) when dealing with U.S. Clients or potential U.S. Clients of the Registered Adviser, the Dual Employees will make clear that they are acting in their capacity as personnel of the Registered Adviser, not a Participating Affiliate; and (iii) the Registered Adviser will disclose to its U.S. Clients in its Form ADV and any brochure provided to U.S. Clients pursuant to Rule 204-3 under the Advisers Act that Participating Affiliates may recommend to their clients, or invest on behalf of their clients in, securities that are the subject of recommendations to, or discretionary trading on behalf of, the Registered Adviser's U.S. Clients.

9. The Registered Adviser will deem as an "associated person" each officer or employee of a Royal Trust Company whose functions are not purely clerical or ministerial in nature and who is involved in formulating or having access to recommendations concerning or effecting delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of, an investment adviser to an Offshore Trust.

10. The Registered Adviser will treat employees of the Registered Adviser's affiliates who maintain or have access to the Registered Adviser's records as "advisory representatives" of the Registered Adviser. The Registered Adviser also will treat all persons deemed to be "associated persons" of the Registered Adviser in accordance with undertakings 7 and 9 as "advisory representatives" of the Registered Adviser. Furthermore, the Registered Adviser will treat all personnel of the Royal Trust Companies who have access to any information concerning which securities are being recommended to U.S. Clients prior to the effective dissemination of the recommendations as "advisory representatives" of the Registered Adviser.

Representations of the Participating Affiliates

11. Each Participating Affiliate will provide to the Registered Adviser, and the Registered Adviser's Form ADV and any brochure provided to U.S. Clients pursuant to Rule 204-3 under the Advisers Act will disclose, the names and other information required by Form ADV for all "associated persons" of the Registered Adviser who are employees of Participating Affiliates as described in the undertakings set forth in your letter.

12. 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 U.S. Clients of the Registered Adviser 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 Affiliates also will maintain staff trading records required by Rule 204-2(a)(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 U.S. Clients of the Registered Adviser. All books and records described above will be maintained and preserved in an easily accessible place in the country where such books and records are kept for a period of not less than five years from the end of the fiscal year during which the last entry was made on such book or record. To the extent that any books and records are not kept in English, a Participating Affiliate will cause such books and records to be translated into English upon reasonable advance request by the Commission or the staff.

13. The Participating Affiliates 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 the staff any and all of the books and records described in undertaking 12, and make available for testimony before, or other questioning by, the Commission or the staff any and all personnel[14] identified by the Commission, the staff, the Registered Adviser, or any Participating Affiliate as having access to or having been involved in providing advice given for or on behalf of the U.S. Clients of the Registered Adviser or related transactions, at such place as the Commission or the staff may designate in the United States or, at the Commission's or the staff's option, in the country where the books and records are kept or such personnel reside. Participating Affiliates will authorize all personnel described in the preceding sentence to testify about all advice given for or on behalf of 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 United States.

14. Each Participating Affiliate (i) will submit to the jurisdiction of U.S. courts for actions arising under the U.S. securities laws in connection with its investment

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[14] See supra note 13.

advisory activities provided for the U.S. Clients of the Registered Adviser, and (ii) will appoint an agent resident in the United States 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 the Registered Adviser and/or a Participating Affiliate or to which the Registered Adviser or a Participating Affiliate has been joined as defendant or respondent, in connection with or arising out of or relating to its investment advisory services provided to U.S. Clients of the Registered Adviser or any related transaction. Each Participating Affiliate also will appoint a successor agent resident in the United States 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 investment advisory activity of the Registered Adviser. No Participating Affiliate will have access to or provide investment advice given for or on behalf of U.S. Clients of the Registered Adviser through the Registered Adviser until documents effecting the appointment of an agent have been filed by the Participating Affiliate with the Commission in substantially the form attached to your letter as Exhibit B.

Representations of the Royal Trust Companies

15. The Royal Trust Companies will keep books and records relating to their delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of, investment advisers to the Offshore Trusts. The Royal Trust Companies also will maintain the staff trading records required by Rule 204-2(a)(12) for all "advisory representatives" (as defined in Rule 204-2(a)(12)(A)) of the Royal Trust Companies described in undertaking 10. All books and records described above will be maintained and preserved in an easily accessible place in the country where such books and records are kept for a period of not less than five years from the end of the fiscal year during which the last entry was made on such book or record. To the extent that any books and records are not kept in English, the Royal Trust Companies will cause such books and records to be translated into English upon reasonable advance request by the Commission or the staff.

16. The Royal Trust Companies 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 the staff any and all of the books and records described in undertaking 15, and make available for testimony before, or other questioning by, the Commission or the staff any and all personnel identified in undertaking 9, and those personnel of the Royal Trust Companies deemed to be "advisory representatives" pursuant to undertaking 10, at such place as the Commission or the staff may designate in the United States or, at the Commission's or the staff's option, in the country where the books and records are kept or such personnel reside. The Royal Trust Companies will authorize all personnel described in the preceding sentence to testify about all advice given with respect to the delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of, investment advisers to the Offshore Trusts. The Royal Trust Companies will not (except with respect to the

identity of the settlors and beneficiaries of the Offshore Trusts) contest the validity of administrative subpoenas for testimony or documents under any laws or regulations other than those of the United States.

17. Each Royal Trust Company (i) will submit to the jurisdiction of U.S. courts for actions arising under the U.S. securities laws in connection with its delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of investment advisers to the Offshore Trusts, and (ii) will appoint an agent resident in the United States 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 the Registered Adviser and/or the Royal Trust Company or to which the Registered Adviser or the Royal Trust Company has been joined as defendant or respondent, in connection with its delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of investment advisers to the Offshore Trusts. Each Royal Trust Company also will appoint a successor agent resident in the United States if the Royal Trust Company or any person discharges the agent or the agent is unwilling or unable to accept service on behalf of the Royal Trust Company at any time until six years have elapsed from the date of the last investment advisory activity of the Registered Adviser. No Royal Trust Company will exercise any fiduciary powers to delegate investment discretion respecting the assets of an Offshore Trust, or to select, retain, remove, approve or recommend an investment adviser to an Offshore Trust, until documents effecting the appointment of an agent have been filed by the Trustee with the Commission in substantially the form attached to your letter as Exhibit B.

Conclusion

Because these positions are based upon 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 staff's position on enforcement action only, and does not purport to express any legal conclusions on the questions presented.

Brendan C. Fox
Attorney

JONES, DAY, REAVIS & POGUE

ATLANTA
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NEW DELHI
NEW YORK
PARIS
RIYADH
TAIPEI
TOKYO
WASHINGTON

SUITE 3100
500 GRANT STREET
PITTSBURGH, PENNSYLVANIA 15219

TELEPHONE: 412-391-3939
FACSIMILE: 412-394-7959
WRITER'S DIRECT NUMBER:
(412) 394-7902

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Investment Advisers Act of 1940,
Sections 80b-3 and 80b-8

June 2, 1998

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

Re: Royal Bank of Canada; Royal Bank of Canada Investment Management (UK) Limited; Royal Bank of Canada Investment Management (USA) Limited

Ladies and Gentlemen:

As you have requested, we are submitting this revised version of our October 28, 1997 letter on behalf of our client, Royal Bank of Canada ("Royal Bank"),[1] the largest financial institution in Canada, to request your concurrence with our opinion that Royal Bank, its wholly-owned United Kingdom investment adviser subsidiary, Royal Bank of Canada Investment Management (UK) Limited ("Royal Bank Investment Management"), and its other subsidiaries existing now or in the future would not be required to register under the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as amended (the "Advisers Act"), if, subject to the conditions and undertakings set forth below, a United Kingdom subsidiary of Royal Bank Investment Management that has registered under the Advisers Act, Royal Bank of Canada Investment Management (USA) Limited (the "Registered Adviser"), provides investment advice to *United States clients* (as defined below).

We are also writing to request assurance that the staff of the Securities and Exchange Commission (the "Staff") would not recommend enforcement action to the Securities

[1] A complete listing of the terms defined herein, and the page on which a term is defined, is set forth in Appendix I attached hereto.

and Exchange Commission (the "Commission") if the Registered Adviser, or any other Royal Bank affiliate that in the future registers under the Advisers Act,[2] advises *foreign clients* (as defined below)[3] in accordance with applicable foreign law and without complying with the Advisers Act, except as described in this letter. We further request assurance that the Staff would not recommend enforcement action to the Commission if, as more fully described in this letter and subject to the conditions and undertakings set forth below, Royal Bank Investment Management or any other affiliate of the Registered Adviser, existing now or in the future, does not register under the Advisers Act, but provides advice to *United States clients* through the Registered Adviser.

The remainder of this letter is divided into four principal parts. Part I provides background information describing Royal Bank and its subsidiaries and their current activities in the United States. Part II describes in detail the proposed investment advisory activities of the Registered Adviser and its proposed organization. Part III sets forth the specific requests for no-action and assurances from the Staff and the undertakings in support of such requests made by Royal Bank. Part IV analyzes the current position of the Staff in respect of the registration under the Advisers Act of foreign investment advisers and demonstrates that the no-action requests made by Royal Bank are consistent with this position.

I. BACKGROUND

A. ROYAL BANK AND THE ROYAL BANK FINANCIAL GROUP[4]

Royal Bank, founded in 1869, is a banking institution organized under the *Bank Act (Canada)* and is the leading financial institution in Canada and, at October 31, 1996, the sixth largest in North America. The global operations of Royal Bank are subject to regulation and

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[2] Royal Bank is considering business opportunities that may require registration of other Royal Bank affiliates as investment advisers under the Advisers Act and that may require further requests for no action from the Commission. We will advise the Staff of further developments as they occur during the pendency of our request.

[3] Although it is not presently contemplated that the Registered Adviser will provide investment advisory services to *foreign clients*, the Registered Adviser may in the future seek to expand its clientele to include *foreign clients*.

[4] Royal Bank and its subsidiaries are commonly referred to as the Royal Bank Financial Group (and herein sometimes as the "Group"). This discussion is derived from Royal Bank's 1996 Annual Report on Form 40-F filed with the Commission on December 17, 1996 (the "1996 Annual Report"). An abridged organizational chart for Royal Bank and its subsidiaries is attached to this letter as Exhibit A.

supervision by the Office of the Superintendent of Financial Institutions (Canada) and the Minister of Finance of Canada and by applicable laws of the foreign countries in which its businesses are conducted, as more particularly described below.

The products and services of the various members of the Royal Bank Financial Group are provided to nearly 10 million consumer and business customers in 150 countries. The Group's global private banking operation, which includes trust and investment management services, falls within the Wealth Management segment of the Group's Business and is the largest and most profitable global private banking operation among Canadian financial institutions.

Wealth Management consists of the investment management, trust and custody services conducted under the Royal Trust name, the Global Private Banking network,[5] mutual funds, private client services of RBC Dominion Securities Inc., and discount brokerage services.

The investment management, trust and custody services conducted under the highly rated Royal Trust name comprise the largest of the Wealth Management businesses in terms of gross revenues ($764 million in 1996),[6] assets under administration and assets under management ($475.1 billion and $51.2 billion, respectively, at October 31, 1996). Along with the Royal Trust deposit, loan and mortgage products, these Royal Trust services are provided to personal and institutional clients in Canada and through 27 Global Private Banking offices in 21 countries.

The principal operating subsidiaries providing the Royal Trust services and products are: (i) Royal Trust Corporation of Canada, a depository trust company organized under the laws of Canada; (ii) The Royal Trust Company, a depository trust company amalgamated under the laws of Canada; and (iii) non-depository trust companies organized under the laws of and located in countries in Europe and the Caribbean.[7]

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[5] Global Private Banking comprises an international network through which the Royal Trust brand of private banking services and products are marketed and distributed. Global Private Banking is not a separately constituted legal entity.

[6] Unless otherwise indicated, references to "$" or "dollars" are United States dollars.

[7] These non-depository trust companies include: (i) Royal Bank of Canada Trust Company (Jersey) Limited ("Royal Trust Jersey"), organized under the laws of and located in the Island of Jersey; (ii) Royal Bank of Canada Trustees (Guernsey) Limited ("Royal Trust Guernsey"), organized under the laws of and located in the Island of Guernsey; (iii) Royal Trust (Bermuda) Limited ("Royal Trust Bermuda"), organized under the laws of and located in the Island of Bermuda; and (iv) Royal Bank of Canada Trust Company (Cayman) Limited ("Royal Trust Cayman"), organized under the laws of and located in the Cayman Islands. Royal Trust Jersey, Royal Trust Guernsey, Royal Trust

(continued...)

As the description above demonstrates, the Royal Bank Financial Group has a substantial global presence among both private and institutional customers in the financial services industry. Part I.B. next describes in greater detail the nature and extent of the offshore trust services marketed to individuals residing in the United States by the Royal Trust Companies.

B. THE ROYAL TRUST COMPANIES

The trust services of the Royal Trust Companies have been approved by Royal Bank for marketing and distribution to wealthy individuals residing in the United States. As a result of this marketing effort, each of the Royal Trust Companies now acts, and in respect of newly established trusts will act, as trustee of trusts established by individuals residing in the United States ("Offshore Trusts"). An Offshore Trust is created pursuant to a written trust agreement pursuant to which the settlor (i) appoints a Royal Trust Company as a trustee of the trust (a Royal Trust Company, in its capacity as trustee of an Offshore Trust, is hereafter referred to as the "Trustee"),[8] (ii) provides for the transfer to the trustee of the trust property, and (iii) names the beneficiaries of the trust.[9] The trust agreement is executed by the settlor and delivered to the Royal Trust Company in its Home Country,[10] where the Royal Trust Company accepts the appointment as Trustee and executes the trust agreement.[11] The trust agreement for an Offshore Trust provides that the administration of the trust will be governed by the laws of either the Home Country of the applicable Royal Trust Company or the laws of another foreign country in which that particular Royal Trust Company operates, hence the nomenclature an "offshore trust." Each

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(...continued)
Bermuda and Royal Trust Cayman are referred to collectively in this letter as the "Royal Trust Companies" and each of them individually as a "Royal Trust Company." None of the Royal Trust Companies has or operates a branch, agency or representative office located in the United States.

[8] In certain circumstances, a settlor may appoint a Royal Trust Company to act as co-trustee of an Offshore Trust.

[9] A beneficiary of an Offshore Trust may be an individual residing in the United States.

[10] "Home Country" means the country in which each Royal Trust Company is organized and from which it operates and thus means in respect of: (i) Royal Trust Jersey, the Island of Jersey; (ii) Royal Trust Guernsey, the Island of Guernsey; (iii) Royal Trust Bermuda, the Island of Bermuda; and (iv) Royal Trust Cayman, the Cayman Islands.

[11] Except for certain administrative or custodial services performed in the United States on its behalf by third-parties or by Royal Bank or its affiliates, the Trustee administers the trust and its assets from its Home Country. Each Trustee, however, communicates by mail and telephone with, and when required by the trust agreement, remits funds or transfers assets to, trust settlors and beneficiaries residing in the United States.

Offshore Trust is of a type typically used in the United States for estate or financial planning purposes and is regarded under the laws of the Trustee's Home Country as establishing a *bona fide* fiduciary relationship[12] and vesting in the Trustee full legal ownership, rights, powers, duties and privileges in and over the trust property.

The Trustee, in the exercise of its trust powers, may or may not maintain direct physical custody of some or all of an Offshore Trust's assets. In order to facilitate the trading of certificated securities, the Trustee may elect to use the services of one or more professional custodians, which may or may not be affiliates of the Trustee, to maintain on its behalf physical custody of the certificates. In some instances, these third-party custodians are located in the United States. Whenever the services of a third-party custodian are used, the Trustee and the custodian enter into an arm's-length safekeeping agreement setting forth the terms upon which the custodian will maintain custody of the specified assets. When the Trustee has direct custody and possession of certificated securities belonging to the Offshore Trusts, the securities are held in a central vault at the Trustee's home office in its Home Country. Each Royal Trust Company maintains vault records indicating to which Offshore Trusts the certificated securities belong and a record of all uncertificated securities it holds, as Trustee, for each Offshore Trust. The funds of each Offshore Trust are maintained in separate, segregated accounts at the Trustee.

As compensation for its services to an Offshore Trust, the Trustee typically receives periodic fees from the Offshore Trust, which are usually fixed in amount but may occasionally be determined as a percentage of the value of the trust's assets. The Trustee may also charge an Offshore Trust a separate custodial fee to reimburse itself for actual costs associated with the recordkeeping, reporting and maintenance of trust assets for which it has custody. Neither the trustee's fee nor the custodial fee charged to an Offshore Trust is determined, directly or indirectly, on a transactional basis or is otherwise based upon the volume of securities trades in an Offshore Trust.

The Trustee of an Offshore Trust does not, directly or indirectly, execute and clear transactions in securities for the Offshore Trust.[13] Trades involving securities of an Offshore Trust are executed and cleared by U.S. registered broker-dealers upon direct instructions from an Offshore Trust's authorized investment adviser. Such instructions may also be forwarded to U.S. broker-dealers by the Trustee upon receipt of appropriate directions from the settlor or such

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[12] As Trustees, the Royal Trust Companies are subject to traditional fiduciary obligations imposed by the laws of their respective Home Country, subject to any limitations or qualifications set forth in the agreement pursuant to which such Offshore Trust has been established.

[13] The Trustee may directly trade assets that are not securities on behalf of an Offshore Trust. The Trustee may also, in accordance with applicable laws, directly make deposits in foreign banks.

investment adviser. The Trustee does not receive any compensation for any transactions effected respecting securities for an Offshore Trust. Each Offshore Trust pays all third-party broker-dealer commissions associated with securities transactions effected for its benefit. The Trustee does not participate in any such commissions, by way of fee splitting or otherwise.

II. PROPOSAL

A. SUMMARY OF ROLE OF REGISTERED ADVISER

Royal Bank has caused the Registered Adviser, Royal Bank Investment Management (USA) Limited, to be organized as a wholly owned subsidiary of Royal Bank Investment Management (UK) Limited to provide investment advice to the Offshore Trusts as well as other wealthy individuals residing and institutional clients located in the United States who do not establish Offshore Trusts.[14] Initially, it is contemplated that these other individuals and institutional clients will establish directly with the Registered Adviser accounts to which the Registered Adviser will render investment advice on a discretionary basis (the "RBIM Accounts").[15]

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[14] During the organization of the Registered Adviser, Royal Bank did not contemplate that the Registered Adviser would provide investment advice to institutional clients, and thus the Registered Adviser's Form ADV does not currently reflect that the Registered Adviser in fact intends to provide investment advice to such clients. In accordance with Rule 204-1(b)(1), therefore, the Registered Adviser will promptly amend Part II, Item 2 of its Form ADV to reflect the fact that the Registered Adviser now intends to provide investment advice to such clients.

[15] The Registered Adviser will have investment discretion over each RBIM Account. In this context, the phrase *investment discretion* refers to the contractual and legal authority to purchase or sell securities for, and to control the disposition of assets in, a particular account or trust, without first obtaining the consent of any other person having a beneficial interest or involvement in such account or trust. See *Status of Investment Advisory Programs Under the Investment Company Act of 1940*, SEC Rel. No. IC 22579, IA-1623 Fed. Reg. 15098, 15101 col. I (March 31, 1997) (a nondiscretionary program is one in which "the investor has the authority to accept or reject each recommendation to purchase or sell a security made by the portfolio manager."); See Robert W. Baird & Co., SEC No-Action Letter, 1971 WL 8497 at *2 (Aug. 13, 1971):

> In our view, a non-discretionary account is one where only the client has the authority to determine whether a particular security in his account is purchased or sold and where the client must exercise a judgment or choice as to whether to follow each and every recommendation with respect to an investment in a particular security.

See also 15 U.S.C. 78c (a)(35) (definition of "investment discretion" under the Securities Exchange Act of 1934).

(continued...)

In previous no-action letters, the Staff has stated that it will look to the definition of "U.S. person" in Section 902(o) of Regulation S under the Securities Act of 1933, as amended ("Regulation S") for guidance in determining what constitutes a "U.S. client" for purposes of the Advisers Act.[16] We are of the opinion and have advised Royal Bank that neither (i) an Offshore Trust of which a Royal Trust Company is acting as the sole trustee or (ii) a discretionary managed account in respect of which the Registered Adviser is the sole investment adviser constitutes a U.S. person.[17] If the definition of U.S. person in Regulation S is determinative of what constitutes a "U.S. client" for purposes of the Advisers Act, then the advisory activities of the Royal Trust Companies and the Registered Adviser arguably fall outside the regulatory reach of the Commission under the Advisers Act. The Commission, however, has not definitively stated what constitutes a "U.S. client" for purposes of the Advisers Act. Moreover, Royal Bank acknowledges that the proposed offshore advisory activities of the Registered Adviser will be, and the offshore trust services of the Royal Trust Companies are, marketed to U.S. persons, and that these activities will involve conduct in the United States and affect U.S. persons, even though these activities will result in the establishment of RBIM Accounts and Offshore Trusts that themselves are not U.S. persons. Furthermore, over time, the Registered Adviser may also seek to provide investment advisory services to persons that fall within the definition of U.S. person, such as nondiscretionary investment accounts and members of identifiable groups of United States citizens abroad, such as members of the United States armed forces serving overseas, as well as *foreign clients*. Accordingly, for purposes of this letter, the term "*United States client*," when used in italics, means and includes (i) the Offshore Trusts, (ii) the RBIM Accounts, and (iii) any U.S. person. For purposes of this letter, the term "*foreign client*," when used in italics, means and includes any person that is not a *United States client*, namely, any person that is neither an Offshore Trust, RBIM Account nor a U.S. person.

In this context, Royal Bank requests assurances from the Staff that it will not recommend to the Commission that it take enforcement action against Royal Bank and its

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[15] (...continued)

The Commission, however, has previously stated that the ability of a customer to place certain restrictions on the types of investments that may be made by the dealer or other fiduciary holding an account does not necessarily render that account nondiscretionary. See *Status of Investment Advisory Programs Under the Investment Company Act of* 1940, SEC Release IC-22579; IA-1623; 57-24-95, 62 Fed. Reg. 15098, 15103 col. I (Mar. 31, 1997) (adopting Rule 3a-4 under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq.; wrap accounts, which are typically managed on a discretionary basis, must permit the client customer to place certain restrictions on the account investments in order to be eligible for the safe harbor of Rule 3a-4).

[16] For purposes of this letter, "U.S. person" means "U.S. person" as defined in Regulation S.

[17] For purposes of this letter, we do not seek your concurrence in these conclusions.

subsidiaries if they act as described in this Part II and in a manner consistent with the proposals and undertakings set forth in Part III below, which include acting as an investment adviser to *United States clients*, including U.S. persons, and *foreign clients*.

B. THE REGISTERED ADVISER AND THE OFFSHORE TRUSTS

Each Royal Trust Company owns, possesses and holds all powers, permits, licenses and other authorizations under its charter and the laws of its Home Country to provide investment advice to the trusts it administers, including the Offshore Trusts, and to possess and exercise investment discretion over the assets of such trusts, subject to it obtaining any licenses, permits, approvals or other qualifications that may be required to exercise legally such powers under conflicts-of-law principles of jurisdictions other than its Home County. Moreover, under the laws of certain of the Home Countries, a question concerning the valid existence of a trust may arise if the trustee does not possess and exercise some authority over the investment of the trust assets, such as the power to appoint and remove third-party advisers to exercise investment discretion with regard to the trust assets.

None of the Royal Trust Companies is currently registered as an investment adviser with the Commission. Accordingly, each of the existing Trust Agreements only permits the Trustee of the Offshore Trust to assume investment discretion over the trust's assets, or to engage in other activities that could constitute the rendering of investment advice to the trust under the Advisers Act,[18] if the Royal Trust Company either registers with the Commission as an investment adviser or receives an opinion from United States legal counsel that it is exempt from such registration or that registration with the Commission is not otherwise required.

The Staff has expressed the view that, in certain circumstances, a foreign trustee is engaged in the business of rendering investment advice for purposes of the Advisers Act when it exercises investment discretion over the assets of trusts it administers.[19] Although the Federal District Court for the Southern District of New York found that a foreign trustee exercising discretionary authority to purchase and sell securities on behalf of the trustee's fiduciary accounts

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[18] For example, a settlor may confer on the Trustee the authority to select, retain, remove, approve or recommend third-party investment advisers for such Offshore Trust.

[19] See, Brewer-Burner & Associates, Inc., [1973-74 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79,719, at 83,295 (February 7, 1974) and Philip Eiseman, SEC No-Action Letter, 1976 SEC No-Act. LEXIS 2859 *1 (July 22, 1976); but see In re Loring, 1942 WL 1363 (S.E.C.).

is not an investment adviser for purposes of the Advisers Act,[20] the Staff has publicly stated its disagreement with the conclusion reached in this case.[21] Accordingly, we have advised the Royal Trust Companies that, without further assurances from the Staff, we are not able to opine that they are exempt from registration under the Advisers Act or that such registration is not otherwise required. Consequently, the circumstances contemplated under the existing Trust Agreements that would vest in the Trustees the power to exercise investment discretion over the assets of the trusts, or otherwise engage in activities that could constitute the rendering of investment advice under the Advisers Act, have not occurred and the Royal Trust Companies do not, therefore, presently exercise any authority over the investment of the securities of any of the Offshore Trusts, nor do they presently select, retain, remove, approve or recommend any investment advisers for any of the Offshore Trusts.

If the Staff takes the no-action positions and provides the assurances we are requesting in this letter, then, based on an opinion letter that we would issue to each Royal Trust Company to the effect that their registration with the Commission under the Advisers Act is not required, each Royal Trust Company will enter into agreements with the Registered Adviser pursuant to which the Registered Adviser will render investment advice to the Offshore Trusts for which such Royal Trust Company acts as Trustee. In these circumstances, Royal Bank proposes that the Trustee would, in connection with assuming investment authority over the assets of an existing Offshore Trust or concurrent with the establishment of a new Offshore Trust, either (i) delegate to the Registered Adviser investment discretion over the securities held by such Offshore Trust, or (ii) delegate to an unaffiliated registered investment adviser investment discretion over the securities held by such Offshore Trust.[22] In the event that the Trustee delegates investment discretion to an unaffiliated registered investment adviser, the Trustee will then retain the Registered Adviser to monitor the performance of such unaffiliated registered investment adviser and will select, retain, remove, approve or recommend such unaffiliated registered investment adviser based on and consistent with the advice and recommendations of the Registered Adviser.

As discussed in detail in Part II.E. below, Royal Bank proposes that any of the officers and employees of the Royal Bank Financial Group that participate in the Group's investment management activities be able to communicate with one another and the Registered

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[20] See Selzer v. Bank of Bermuda, Ltd., 385 F. Supp. 415 (S.D.N.Y. 1974).

[21] Supra note 15.

[22] A settlor of an Offshore Trust may make a precatory request for the selection, retention, removal, approval or recommendation of an unaffiliated registered investment adviser qualified to provide discretionary investment advice, in which case such request would be accepted by the Trustee. In the absence of such a request, the Trustee will name the Registered Adviser as the Investment Adviser.

Adviser concerning the investment advice to be given by the Registered Adviser to any *United States client* before such advice is effectively disseminated to the client. Officers and employees of a Royal Trust Company may participate in such communications.

We do not regard communications that (i) relate to the Registered Adviser's advice or recommendations in respect of the investments of the Offshore Trusts and (ii) are among the Registered Adviser and the officers and employees of a Trustee who participate in the Trustee's administration of the Offshore Trusts, to constitute communications before the effective dissemination of such advice or recommendations because the Trustees are acting in this capacity as the client of the Registered Adviser. Accordingly, to the extent that the communications of the officers and employees of a Royal Trust Company with the Registered Adviser are limited to the investment activities of the Offshore Trusts for which such Royal Trust Company acts as Trustee, such Royal Trust Company will not be deemed a Participating Affiliate (as defined and proposed in Part II.E. below), nor would such officers or employees of such Royal Trust Company be deemed "associated persons" of the Registered Adviser, although they would be treated as "advisory representatives" of the Registered Adviser.

By contrast, to the extent any officer or employee of a Royal Trust Company communicates with the Registered Adviser regarding the investment recommendations or advice to be given to any *United States client* other than the Offshore Trusts administered by such Royal Trust Company, including any Offshore Trust administered by any other Royal Trust Company, then such Royal Trust Company would be deemed a Participating Affiliate (as defined and proposed in Part II.E. below) and any officer or employee of such Royal Trust Company having knowledge of such investment recommendations or advice before their effective dissemination to the client would be deemed an "associated person" of the Registered Adviser.[23]

C. THE REGISTERED ADVISER AND THE RBIM ACCOUNTS

Royal Bank also intends the investment advisory services of the Registered Adviser to be marketed and promoted to U.S. persons through the "RBIM Sales Force," which consists of: (i) the Global Financial Services Network, which is an expanding network of U.S. broker-dealers, investment advisers and their representatives; (ii) Royal Bank's existing Canadian marketing personnel; (iii) Royal Bank's branch, agency and representative offices located in the United States; and (iv) Royal Bank's brokerage subsidiary in the United States, RBC Dominion Securities Corporation. As stated above, Royal Bank's plans contemplate that the RBIM Sales Force will market and promote the investment advisory services of the Registered Adviser to U.S. persons for which the RBIM Sales Force determines such services are appropriate. If they choose

[23] See note 36 infra.

to do so, such U.S. persons will then establish RBIM Accounts directly with the Registered Adviser to which the Registered Adviser will render investment advice on a discretionary basis. Royal Trust Jersey or another subsidiary of Royal Bank, Royal Bank of Canada (Channel Islands) Limited, will act as custodian in respect of the assets of an RBIM Account.

D. FORMULATION OF THE REGISTERED ADVISER'S INVESTMENT ADVICE

1. Individualized Investment Advice

The Registered Adviser will assign a portfolio manager to each of the Registered Adviser's clients, namely, the RBIM Accounts and the Offshore Trusts that are advised by the Registered Adviser. The portfolio manager will seek to gain a clear understanding of each client's individual investment objectives and, thereafter, will be responsible for the design and management of the client's investment portfolio. A client's investment objectives typically involve, among other considerations, capital protection requirements, base currency, growth/income requirements, sensitivity/willingness to risk, expectations of performance against the risk position, liquidity requirements and time horizons. From this understanding of a client's individual investment objectives emerges the criteria that the portfolio manager will use to design a personalized investment portfolio for the client. The portfolio manager will also be responsible for making the day-to-day portfolio management decisions for the clients of the Registered Adviser to which he is assigned.

2. Global Investment Strategy

The design and day-to-day management of the investment portfolio of each of the Registered Adviser's clients will be decided upon by the assigned portfolio manager consistent with Royal Bank's global investment strategy. Global investment strategy with regard to asset, country (among the world's 50 largest countries by gross domestic product) and currency allocation is formulated by Royal Bank's Global Investment Committee (the "GIC"), with the support and assistance of its Global Investment Group (the "GIG").

The GIG is composed of portfolio managers and other representatives (including research and economic analysts) from various of the investment advisory units within the Royal Bank Financial Group,[24] who are organized and function within the GIG as subadvisory groups,

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[24] Royal Bank's brokerage arm, RBC Dominion Securities Inc., and its U.S. subsidiary, RBC Dominion Securities Corporation, are neither represented on the GIC or the GIG nor do they participate in the formulation of, receive or render investment advice based on the GIC's global investment strategy. The research operations of RBC

(continued...)

based on region, asset class (equities or bonds) or client type (institutional or client). The subadvisory groups meet or teleconference within their respective regions at least monthly.

The GIC is comprised of a chairperson and ten of the most senior portfolio managers and representatives serving the GIG. The GIC is responsible for overseeing and coordinating the activities of the GIG and for monitoring implementation of the global investment strategy within the various advisory units of the Royal Bank Financial Group. The GIC meets at least quarterly and teleconferences biweekly.

With the support of the GIG and its subadvisory groups, the GIC establishes general investment and allocation policies and guidelines using a "top-down" macroeconomic approach that analyses economies, currencies, markets and sectors, rather than the selection of individual investment alternatives. From this analysis, the GIC formulates global investment guidelines regarding currency views, the allocation of investments among asset classes (cash and currencies, bonds, and equities) and among countries and geographic regions represented within the GIG.

Within operational guidelines and the global investment strategy formulated by the GIC, the GIG's subadvisory groups identify securities within their respective geographic regions or asset classes that they perceive, through an exhaustive "bottom-up" analysis of industry sectors and companies, as offering the greatest investment opportunities relative to risk. The investments identified within the subadvisory groups are reported to the GIC.

Through reports and briefings, the portfolio managers assigned to the Registered Adviser's clients will be continuously apprised of the GIC's global investment strategy, the GIC's views regarding securities identified within the subadvisory groups of the GIG, and the GIC's currency views. The portfolio managers will make investment decisions and recommendations as to specific securities to be purchased and sold for the account of the individual clients based on the client's individual objectives.

As previously stated, it is neither the purpose nor the function of the GIC or the GIG to make investment recommendations to or investment decisions on behalf of advisory clients of the Royal Bank Financial Group; such recommendations and decisions remain exclusively the responsibility of the individual portfolio managers. Thus, neither the GIC nor the GIG will have access to the client files of the Registered Adviser, nor will they have knowledge of

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[24] (...continued)
Dominion Securities Inc. and RBC Dominion Securities Corporation are completely separate and distinct from the research operations of the GIG.

(i) the specific composition of portfolios of the Registered Adviser's clients, or (ii) information concerning the specific investment decisions and recommendations made by portfolio managers to the Registered Adviser's clients[25]. In addition, neither the GIC nor the GIG will prepare research reports or other information specifically for use by or on behalf of the Registered Adviser's clients.[26]

Accordingly, the Registered Adviser will be responsible for identifying, structuring, monitoring and disposing of portfolio investments in respect of the RBIM Accounts and those Offshore Trusts for which the Registered Adviser acts as an investment adviser.

E. ROLE OF PARTICIPATING AFFILIATES IN INVESTMENT ADVISORY ACTIVITIES OF THE REGISTERED ADVISER

Royal Bank proposes that any of the officers and employees[27] of the Royal Bank Financial Group that participate in the Group's investment management activities be able to communicate with one another and the Registered Adviser concerning the investment advice to be given by the Registered Adviser to any *United States client* before such advice is effectively disseminated to the client. Any such officer or employee so communicating would be deemed an "associated person" of the Registered Adviser, and the entity employing such officer or employee would be deemed a "Participating Affiliate."[28]

In addition, Royal Bank proposes that the Participating Affiliates, the Royal Trust Companies and the Registered Adviser be able to freely share personnel, provided that those

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[25] It is contemplated that one or more portfolio managers for clients of the Registered Adviser may serve on the GIG or the GIC. If that is the case, then these individuals will have access to and information regarding the portfolios of the Registered Adviser's clients in carrying out their functions as portfolio managers, but not in respect of their roles as members of the GIG or the GIC.

[26] In compliance with applicable IMRO rules, Royal Bank Investment Management issues for public dissemination a quarterly report setting forth general information regarding Royal Bank's current views concerning global investment. Similar reports may be issued and publicly disseminated by the Registered Adviser after being conformed to comply with applicable requirements of the Advisers Act.

[27] One or more of these individuals may also be directors of Royal Bank and/or its subsidiaries.

[28] Initially, Royal Bank intends the following Royal Bank affiliates to be deemed Participating Affiliates and thus subject to the undertakings set forth in Part III.B. below: (i) Royal Bank of Canada (Suisse); (ii) Royal Bank of Canada Investment Management (Guernsey) Limited; (iii) Royal Bank of Canada (Caribbean) Corporation; (iv) RBC Investment Management (Asia) Limited; (v) Royal Bank of Canada Investment Management (UK) Limited; and (vi) Royal Bank of Canada Trust Company (Jersey) Limited.

personnel (collectively, the "Dual Employees") participating in the Registered Adviser's investment advisory activities in respect of its *United States clients* or having access to any information concerning which securities are being recommended to its *United States clients* prior to the effective dissemination of the recommendations are deemed "associated persons" of the Registered Adviser. Initially,[29] the employees of the Registered Adviser who will be responsible for rendering investment advice on behalf of the Registered Adviser will also be employees of Royal Bank or Royal Bank Investment Management.[30]

Advice from Participating Affiliates would be provided either directly through the Registered Adviser or by the dedication of personnel of the Participating Affiliates to the Registered Adviser thereby giving its *United States clients* access to the services of such personnel. Thus, Royal Bank proposes that Dual Employees, including officers, portfolio managers, research analysts and other employees whose functions or duties relate to the determination of investment recommendations to clients of the Registered Adviser, be able to participate in the investment advisory business of the Registered Adviser in respect of its *United States clients*, without the Participating Affiliates that employ such Dual Employees 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 outside the United States that may have, or that may be intended to have, effects within the United States, on investors or markets. Such participation would include any investment advice rendered to the Registered Adviser's *United States clients* and it might include activities that range from

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[29] The investment management staff of the Registered Adviser servicing its *United States clients* may increase or decrease depending on the success of the Registered Adviser's U.S. business. Accordingly, we request that the no-action relief not be predicated on the number of portfolio managers that will be providing advice to the Registered Adviser's *United States clients*.

[30] Initially, the personnel of the Registered Adviser who will be responsible for providing investment advice will be Messrs. Philip Darwall-Smith, Mark Hirst, Vittorio Fegitz, David Cookson, Mark Anderson and Stephen Brown. Mr. Darwall-Smith, who will be the Chief Executive Officer of the Registered Adviser, joined Royal Trust in 1992 as head of investment management operations for Royal Bank Investment Management's predecessor. He has been employed as an investment manager since 1981. Mr. Hirst currently serves as a senior portfolio manager for Royal Bank Investment Management and as Chief Investment Officer for the GIG. He has been employed as an investment manager for 10 years. Mr. Fegitz is also currently employed as a senior portfolio manager for Royal Bank Investment Management. He has been employed as an investment manager for the past 12 years. Mr. Brown currently serves as a research analyst for the Global Investment Group. He has worked as a financial analyst for various companies since 1992. More detailed information on these individuals, including Messrs. Cookson and Anderson, will be provided on their respective Schedule Ds to the Registered Adviser's Form ADV.

employment as a Dual Employee to secondment arrangements with the Registered Adviser to communicating to the Registered Adviser's *United States clients* from the Participating Affiliate's offices or elsewhere. As stated above, all such personnel so participating in the Registered Adviser's investment advisory business in respect of its *United States clients*, or having access to any information concerning which securities are being recommended to its *United States clients* prior to the effective dissemination of the recommendations, while they may not be directors, officers or employees of the Registered Adviser, will be deemed to be "associated persons" for purposes of the Advisers Act. Moreover, all such personnel will make clear in all communications with the Registered Adviser's *United States clients* that they are acting for and on behalf of the Registered Adviser. Notwithstanding such employment or secondment arrangements, the Registered Adviser will at all times retain its own personnel, by employing Dual Employees or otherwise, who are capable of providing investment advice.

Under the proposed plan, other than the Registered Adviser, the Participating Affiliates and the Dual Employees, no other affiliate of Royal Bank will be involved in the provision of investment advice to either the Offshore Trusts or the RBIM Accounts or any other *United States client* of the Registered Adviser.

F. ADVICE TO *FOREIGN CLIENTS*

Finally, in the event that the Registered Adviser seeks to act as an investment adviser for *foreign clients*, Royal Bank proposes that the Registered Adviser be able to advise *foreign clients* solely in accordance with applicable 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 III.A.B., below, so long as such activities do not constitute conduct within the territory of the United States and do not have effects within the United States.

Royal Bank further proposes that the Participating Affiliates be permitted by the Commission 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 or have an effect in the United States.

G. FORMATION OF THE REGISTERED ADVISER

Royal Bank Investment Management has organized the Registered Adviser in the United Kingdom. As stated previously, the Registered Adviser has registered with the Commission as an investment adviser under the Advisers Act. The Registered Adviser will be organized under, subject to and operated in conformity with all applicable investment adviser laws

of the United Kingdom, including the U.K. Financial Services Act of 1986 (the "Financial Services Act") and the rules promulgated by the Investment Management Regulatory Organisation Limited ("IMRO"), the U.K. self-regulating organization for the investment management industry.[31]

The Registered Adviser has been organized as a separate legal entity distinct from Royal Bank and its other affiliates[32] and, when it commences operations, will be staffed with personnel capable of providing investment advice. Furthermore, the Registered Adviser will bear the expenses of management and administrative services connected with its investment advisory activities.

Royal Bank proposes that it be able to constitute the Board of Directors of the Registered Adviser so that any director of the Registered Adviser may also be a director, officer or employee of a Participating Affiliate. Currently, the Board of Directors of the Registered Adviser consists of three people, Messrs. Michael Lagopoulos and Cortland Scott Brown[33], who are also employed by Royal Bank, and Mr. Randle Philip Ralph Darwall-Smith. In addition, Royal Bank proposes that the Registered Adviser be able to share office space, records, telephone lines and other facilities with the Participating Affiliates.

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[31] All persons (other than exempt persons) carrying on an investment management business in the United Kingdom are required to be authorized to carry on such business pursuant to the Financial Services Act. The Registered Adviser has obtained such authorization by means of its membership in IMRO. The IMRO rules establish a regulatory regime for investment managers and advisers which in some respects goes beyond the Commission's regulation under the Advisers Act. These rules apply to any IMRO member in relation to investment business that the member carries on from a permanent place of business in the United Kingdom. The IMRO rules will, therefore, apply to the Registered Adviser's business for its *United States clients* because its sole office will be in the United Kingdom.

[32] See the abridged organizational chart attached as Exhibit A.

[33] Mr. Hirst will soon succeed Mr. Brown as a director of the Registered Adviser. In accordance with Rule 204-1(b)(2), the Registered Adviser will reflect the election of Mr. Hirst and the resignation of Mr. Brown in an amendment to the Registered Adviser's Form ADV within ninety days of the end of the Registered Adviser's fiscal year.

III. REQUESTS AND UNDERTAKINGS FOR PROPOSED ACTIVITIES

A. REQUESTS

We request assurances that the Staff would not recommend enforcement action to the Commission if, as more fully described in this letter:

A. Royal Bank, the Royal Trust Companies and the Participating Affiliates do not register under the Advisers Act notwithstanding that:

1. the Registered Adviser provides investment advisory services to *United States clients*;

2. such entities provide investment advisory services to *foreign clients* solely in accordance with applicable foreign law; and

3. such entities provide investment advice to *United States clients* through the Registered Adviser, either by having personnel from such entities participate in the investment advisory business of the Registered Adviser in respect of its *United States clients* or by rendering such advice to the Registered Adviser; and

4. the Royal Trust Companies will have conferred upon them, as Trustees of the Offshore Trusts, investment authority over the assets of the Offshore Trusts and will exercise that authority solely by delegating investment discretion for assets of the Offshore Trusts to the extent related to or involving securities or activities constituting investment advice within the meaning of the Advisers Act[34] either to (i) the Registered Adviser, or (ii) if requested by the settlor of an Offshore Trust either at the time a Royal Trust Company assumes investment authority over the assets of an existing Offshore Trust or concurrent with the establishment of a new Offshore Trust, to an unaffiliated investment adviser that is registered as an investment adviser under applicable United States laws and qualified to provide discretionary investment advice, and whose performance will

[34] The Royal Trust Companies, when acting as a Trustee of an Offshore Trust, will exercise investment authority over the assets of such Offshore Trust without delegating to the Registered Adviser investment discretion for the assets of the Offshore Trust to the extent such exercise is not related to or involving securities or activities constituting investment advice within the meaning of the Advisers Act. For example, a Trustee may apply cash assets of an Offshore Trust to payments of premiums due on life insurance policies owned by the Offshore Trust or to investments in real estate or artworks.

be monitored by the Registered Adviser, and that may be selected, retained, removed, approved or recommended by the applicable Royal Trust Company based on and consistent with the advice and recommendations of the Registered Adviser.

B. The Registered Adviser 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:

1. without complying with the following provisions of the Advisers Act and the rules thereunder with respect to the Registered Adviser's relationships with its *foreign clients*:

a. Rule 204-2(a)(3) and (7) with respect to transactions involving *foreign clients* that do not relate to advisory services performed by the Registered Adviser on behalf of *United States clients* or related securities transactions;[35]

b. Rule 204-2(a)(8), (9), (10), (11), (14), (15) and (16) and 204-2(b) with respect to transactions involving, or representations or disclosures made to, *foreign clients*;

c. Rule 204-3;

d. Section 80b-6(3) and Rules 206(4)-1, 206(4)-2, 206(4)-3 and 206(4)-4;

e. Section 80b-5; and

f. Section 80b-15(b); and

[35] Royal Bank understands that the Staff interprets broadly the phrase "related securities transactions." See e.g., Murray Johnstone Holdings Limited; Murray Johnstone Limited; Murray Johnstone International Limited, SEC No-Action Letter, 1994 SEC No-Act. LEXIS 734, at *5, note 7 (Oct. 7, 1994) (hereinafter *Murray Johnstone*); accord Mercury Asset Management plc, SEC No-Action Letter, 1993 SEC No-Act. LEXIS 652, at *11, note 12 (April 16, 1993)(hereinafter *MAM*); and Kleinwort Benson Investment Management Limited; Kleinwort Benson Pacific Limited; Kleinwort Benson Investment Management KK; Kleinwort Benson Investment Management Americas Inc., SEC No-Action Letter, 1993 SEC No-Act. LEXIS 1181, at *9, note 6 (December 15, 1993)(hereinafter *Kleinwort Benson*).

2. to the extent that acts or omissions of the Registered Adviser involve no conduct or have no effects in the United States, or have no effects on *United States clients* of the Registered Adviser:

a. without enforcing any policies or procedures required by or established pursuant to Section 80b-4(a); or

b. by engaging in acts or omissions violative of the requirements of Sections 80b-6(1), (2) or (4).

B. UNDERTAKINGS

As set forth in the discussion below, we believe these proposals are consistent with the Commission's current views on the limited extraterritorial applicability of the Advisers Act to activities of foreign investment advisers, namely, 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, unless the foreign adviser's activities with foreign clients involve conduct or effects in the United States. In conformity with the Staff's position and as part of the requests for assurances set forth above, Royal Bank hereby makes the following undertakings on behalf of itself, the Registered Adviser, the Royal Trust Companies and the Participating Affiliates:

1. The Registered Adviser will comply in all respects with all the requirements of the Advisers Act with respect to the *United States clients*.

2. The Registered Adviser will maintain all books and records in accordance with Rule 204-2 under the Advisers Act with respect to *foreign clients* except as specifically requested in Request III.A.B. of this letter.

3. The Registered Adviser 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 and those required by foreign law to be kept.

4. The Registered Adviser 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.

5. The Registered Adviser will list on its Form ADV and any brochure provided to *United States clients* pursuant to Rule 204-3 under the Advisers Act (i) all directors of the Registered Adviser and each portfolio manager of the Registered Adviser (whether or not also a director of the Registered Adviser) who provides investment advice to the *United States clients*, and (ii) the names of all individuals and Participating Affiliates involved in generating or having access to 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. The Registered Adviser will not hold itself out to *foreign clients* as being registered under the Advisers Act. When communications are sent to both *United States clients* and *foreign clients*, (i) separate communications will be sent, (ii) references to the Registered Adviser'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 the Registered Adviser will be complying with the Advisers Act only with respect to *United States clients*.

7. The Registered Adviser 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 the Registered Adviser makes to its *United States clients*, or who has access to any information concerning which securities are being recommended to *United States clients* prior to the effective dissemination of the recommendations (including dealing room personnel, if trades for *United States clients* are placed for execution with any affiliate of the Registered Adviser).[36]

8. (i) The Registered Adviser will make clear in any communications between the Dual Employees and its *United States clients* that the communications are from the Registered Adviser, not any Participating Affiliate; (ii) when dealing with *United States clients* or potential *United States clients* of the Registered Adviser, the Dual Employees will make clear that they are acting in their capacity as personnel of the Registered Adviser, not a Participating Affiliate; and (iii) the Registered Adviser will disclose to its *United States clients* in its Form ADV and any brochure provided to *United States clients* pursuant to Rule 204-3 under the Advisers Act that Participating Affiliates may recommend to their clients, or invest on behalf of their clients in,

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[36] Royal Bank intends the Registered Adviser to designate as "associated persons" members of its Global Investment Committee, which currently numbers approximately 11 individuals; however, Royal Bank does not intend for (i) directors, officers, or employees of the Royal Bank Financial Group to whom the general investment strategy of the Global Investment Group is communicated, or (ii) members of the Global Investment Group other than the Global Investment Committee to be designated as "associated persons" unless such individuals would otherwise be required to be designated as "associated persons" pursuant to the undertakings set forth herein. See text accompanying note 23 supra.

securities that are the subject of recommendations to, or discretionary trading on behalf of, the Registered Adviser's *United States clients*.

9. The Registered Adviser will deem as an "associated person" each officer or employee of a Royal Trust Company whose functions are not purely clerical or ministerial in nature, and who is involved in formulating or having access to recommendations concerning or effecting the delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of, an investment adviser to an Offshore Trust.

10. The Registered Adviser will treat employees of the Registered Adviser's affiliates who maintain or have access to the Registered Adviser's records as "advisory representatives" of the Registered Adviser. The Registered Adviser will also treat all persons deemed to be "associated persons" of the Registered Adviser in accordance with Undertakings 7 and 9 as "advisory representatives" of the Registered Adviser. Furthermore, the Registered Adviser will treat all personnel of the Royal Trust Companies who have access to any information concerning which securities are being recommended to *United States clients* prior to the effective dissemination of the recommendations as "advisory representatives" of the Registered Adviser.

11. Each Participating Affiliate will provide to the Registered Adviser, and the Registered Adviser's Form ADV and any brochure provided to *United States clients* pursuant to Rule 204-3 under the Advisers Act will disclose, the names and other information required by Form ADV for all "associated persons" of the Registered Adviser who are employees of Participating Affiliates as described in the Undertakings set forth herein.

12. 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* of the Registered Adviser 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 Affiliates also will maintain the staff trading records required by Rule 204-2(a)(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* of the Registered Adviser. All books and records described above will be maintained and preserved in an easily accessible place in the country where such books and records are kept for a period of not less than five years from the end of the fiscal year during which the last entry was made on such book or record. To the extent that any books and records are not kept in English, a Participating Affiliate will cause such books and records to be translated into English upon reasonable advance request by the Commission or the Staff.

13. The Participating Affiliates 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 the Staff any and all of the books and records described in Undertaking 12, and make available for testimony before, or other questioning by, the Commission or the Staff any and all personnel identified by the Commission, the Staff, the Registered Adviser or any Participating Affiliate as having access to or having been involved in providing advice given for or on behalf of the *United States clients* of the Registered Adviser or related transactions, at such place as the Commission or the Staff may designate in the United States or, at the Commission's or the Staff's option, in the country where the books and records are kept or such personnel reside. Participating Affiliates will authorize all personnel described in the preceding sentence to testify about all advice given for or on behalf of *United States clients* and any related transactions (except with respect to the identity of *foreign clients*).[37] 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.

14. 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 its investment advisory activities provided for the *United States clients* of the Registered Adviser, and (ii) will appoint an agent resident in the United States 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 the Registered Adviser and/or the Participating Affiliate or to which the Registered Adviser or the Participating Affiliate has been joined as defendant or respondent, in connection with or arising out of or relating to its investment advisory services provided to *United States clients* of the Registered Adviser or any related transaction. Each Participating Affiliate also will appoint a successor agent resident in the United States 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 investment advisory activity of the Registered Adviser. No Participating Affiliate will have access to or provide investment advice given for or on behalf of *United States clients* of the Registered Adviser through the Registered Adviser 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 B.

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[37] See Advisers Act Rule 204-2(d), which permits clients to be identified by "numerical or alphabetical code or some similar designation."

15. The Royal Trust Companies will keep books and records relating to their delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of, investment advisers to the Offshore Trusts. The Royal Trust Companies also will maintain the staff trading records required by Rule 204-2(a)(12) for all "advisory representatives" (as defined in Rule 204-2(a)(12)(A)) of the Royal Trust Companies described in Undertaking 10. All books and records described above will be maintained and preserved in an easily accessible place in the country where such books and records are kept for a period of not less than five years from the end of the fiscal year during which the last entry was made on such book or record. To the extent that any books and records are not kept in English, the Royal Trust Companies will cause such books and records to be translated into English upon reasonable advance request by the Commission or the Staff.

16. The Royal Trust Companies 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 the Staff any and all of the books and records described in Undertaking 15, and make available for testimony before, or other questioning by, the Commission or the Staff any and all personnel identified in Undertaking 9, and those personnel of the Royal Trust Companies deemed to be "advisory representatives" pursuant to Undertaking 10, at such place as the Commission or the Staff may designate in the United States or, at the Commission's or the Staff's option, in the country where the books and records are kept or such personnel reside. The Royal Trust Companies will authorize all personnel described in the preceding sentence to testify about all advice given with respect to the delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of, investment advisers to the Offshore Trusts. The Royal Trust Companies will not (except with respect to the identity of the settlors and beneficiaries of the Offshore Trusts) contest the validity of administrative subpoenas for testimony or documents under any laws or regulations other than those of the United States.

17. Each Royal Trust Company (i) will submit to the jurisdiction of the United States courts for actions arising under the United States securities laws in connection with its delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of, investment advisers to the Offshore Trusts, and (ii) will appoint an agent resident in the United States 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 the Registered Adviser and/or the Royal Trust Company or to which the Registered Adviser or the Royal Trust Company has been joined as defendant or respondent, in connection with its delegation of investment discretion to, or the selection, retention, removal, approval or recommendation of investment advisers to the Offshore Trusts. Each Royal Trust Company also will appoint a successor agent resident in the

United States if the Royal Trust Company or any person discharges the agent or the agent is unwilling or unable to accept service on behalf of the Royal Trust Company at any time until six years have elapsed from the date of the last investment advisory activity of the Registered Adviser. No Royal Trust Company will exercise any fiduciary powers to delegate investment discretion respecting the assets of an Offshore Trust, or to select, retain, remove, approve or recommend an investment adviser to an Offshore Trust, until documents effecting the appointment of an agent have been filed by the Trustee with the Commission substantially in the form attached hereto as Exhibit B.

IV. LEGAL DISCUSSION

Based on the foregoing and for the reasons discussed below, it is our view that the scope of this no-action request is consistent with the current position of the Staff concerning the limited extraterritorial application of the Advisers Act, and thus, Royal Bank, the Participating Affiliates and the Royal Trust Companies may pursue their proposed activities as described herein without registering under the Advisers Act. The requested no-action response would relieve Royal Bank, the Participating Affiliates, the Royal Trust Companies and the Registered Adviser from compliance with certain requirements of the Advisers Act in respect of their dealings with *foreign clients* that generally do not and will not involve conduct or effects in the United States, while at the same time providing the *United States clients* of the Registered Adviser with all of the material protections of the Advisers Act. We believe that the recordkeeping obligations contemplated by this letter, coupled with the submission by the Participating Affiliates and the Royal Trust Companies to the jurisdiction of U.S. courts as set forth above, will provide the Commission with adequate information and the necessary means to monitor and enforce compliance with the obligations of such entities to the Registered Adviser's *United States clients*.

Under Section 80b-3(a) of the Advisers Act, "[I]t shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser."[38] An "investment adviser" is defined in relevant part as:

> any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part

[38] 15 U.S.C. § 80b-3(a).

> of a regular business, issues or promulgates analyses or reports concerning securities....[39]

The requesting parties do not dispute that the proposed activities of the Registered Adviser and the Participating Affiliates fall within the definition of "investment adviser" for purposes of Section 80b-2(a)(11). Moreover, as previously discussed, we are aware of the Staff's position that a foreign trustee may be acting as an investment adviser for purposes of the Advisers Act when it exercises discretionary authority over the assets of a trust and the conflicting authority on this issue.[40] Furthermore, the Commission has never explicitly stated that a foreign trustee that, in the exercise of its fiduciary powers conferred under applicable foreign law or the provisions of the relevant trust agreement, selects, retains, removes, approves or recommends investment advisers on behalf of a trust, in consultation with an investment adviser registered under the Advisers Act, is acting as an investment adviser for purposes of the Advisers Act. Even if the Staff is not able to confirm that the activities of the Royal Trust Companies respecting the selection, retention, removal, approval or recommendation of investment advisers to the Offshore Trusts do not constitute acting as an investment adviser, the Staff should be able to confirm that it will not recommend that the Commission take enforcement action if the Royal Trust Companies fail to register as investment advisers under the facts and circumstances and subject to the undertakings set forth in this letter. As the analysis below demonstrates, this request is consistent with the position taken by the Staff in previous no-action letters.

Although the Commission in the past interpreted the language of Section 80b-3(a) as applying to acts that occur outside the United States, its view now is 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."[41] Nevertheless, the Commission will require the adviser to keep certain records and make available certain personnel on request by the Commission so that the

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[39] Id. § 80b-2(a)(11).

[40] See supra notes 19 to 21 and accompanying text.

[41] *Murray Johnstone* at *3. U.S. investment advisers generally continue to be subject to regulations and substantive compliance worldwide, including in respect to their foreign clients. See also "Protecting Investors: A Half Century of Investment Company Regulation, SEC Division of Investment Management (May 1992) at 222, 232 and note 32 (hereinafter *Protecting Investors*).

Commission may "monitor and enforce the registered foreign adviser's performance of its obligations to its U.S. clients and to ensure the integrity of U.S. markets."[42]

Royal Bank acknowledges that the Commission has an interest in monitoring the activities of the Royal Trust Companies and the Registered Adviser to protect U.S. persons and ensure the integrity of U.S. markets. Nevertheless, given the fiduciary nature and limited scope of the Royal Trust Companies' proposed activities, namely the selection, retention, removal, approval or recommendation of a registered investment adviser to the Offshore Trusts based upon the recommendations of the Registered Adviser or, if applicable, the delegation to the Registered Adviser of investment discretion respecting the assets of an Offshore Trust, and the fact that the Royal Trust Companies will only exercise such powers in conformity with the undertakings made in this request letter, the requesting parties believe that the Commission will be able to perform its obligations to protect U.S. persons and the integrity of U.S. markets without requiring the Royal Trust Companies themselves to register as investment advisers under the Advisers Act.

Section 80b-8(d) of the Advisers Act makes it unlawful "for any person indirectly, or through or by any person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of [the Advisers Act]."[43] The Commission has employed this provision of the Advisers Act to ensure that a person who would otherwise be required to register under and comply with the Advisers Act does not circumvent its requirements through the organization of a distinct (but not separate) legal entity that acts as the unregistered person's conduit for the provision of investment advice. This stated policy of Congressional concern with circumvention of the requirements of the Advisers Act significantly affects the manner in which a foreign investment adviser interested in providing investment advice to both U.S. and foreign persons must structure its activities to avoid either (i) having to register as an investment adviser under the Advisers Act or (ii) complying with all of the Advisers Act's substantive requirements in respect of foreign persons that are clients of the foreign adviser.

In 1992, the Commission responded to the increasing globalization of financial markets by narrowing the scope of its enforcement activities under the Advisers Act to those advisory activities that are either conducted in the United States or have effects in the United States.[44] As a result of its adoption of this conducts and effects approach, the Commission has substantially modified the factors the Commission will examine in order to determine the

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[42] *Murray Johnstone* at *43.

[43] 15 U.S.C. § 80b-8(d).

[44] See *Protecting Investors*.

"separateness" of registered and unregistered affiliates. Currently, the predominant method of determining the separateness of a registered adviser and its unregistered affiliate is to examine whether:

(i) the two entities are separately organized (i.e., two distinct entities);

(ii) the registered entity is staffed with personnel (whether physically located in the U.S. or abroad) who are capable of providing investment advice;[45]

(iii) 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 registered adviser; and

(iv) 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.[46]

The Staff first applied the conducts and effects test and its related test for separateness in Uniao de Bancos de Brasileiros S.A.[47] In *Unibanco*, the Staff provided assurances that it would not recommend enforcement action to the Commission if a foreign bank did not register under the Advisers Act notwithstanding that its wholly owned subsidiary, a U.S.-registered investment adviser, provided investment advisory services to U.S. persons and whose board of directors consisted entirely of members of the parent bank's investment committee.[48] The Staff also did not recommend enforcement action notwithstanding that the registered adviser subsidiary provided investment advisory services to its foreign clients solely in

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[45] As the analysis below discusses, the relevant SEC no-action letters indicate that these personnel may be Dual Employees.

[46] *Murray Johnstone* at *4. See also Protecting Investors at 233.

[47] SEC No-Action Letter, 1992 SEC No-Act. LEXIS 817 (July 28, 1992) (hereinafter *Unibanco*).

[48] See id. at *3. As in the case of the Global Investment Group, the parent bank's investment committee set general investment policies and guidelines for the bank's investment management services. See id.

accordance with the laws of its domicile, Brazil (or other applicable law) without complying with certain provisions of the Advisers Act with respect to its non-U.S. advisory activities.[49]

In two recent no-action letters, the Staff further elaborated on the scope of the conducts and effects test and the analysis first applied in *Unibanco*. In *MAM*, the Staff extended the *Unibanco* doctrine to permit foreign affiliates of a U.S.-registered, foreign investment adviser (defined therein, as in this request letter, as "Participating Affiliates") to provide investment advice through the registered adviser without having to register themselves under the Advisers Act, provided that certain undertakings similar to those set forth in this letter were met.[50] In *Kleinwort Benson*, the Staff declared that, based on certain undertakings made by the requesting parties, it would not recommend enforcement action if unregistered affiliates of a U.S.-registered foreign investment adviser (defined therein, as in this request letter, as "Participating Affiliates") and the registered investment adviser employed certain common directors, officers and employees (defined therein, as in *MAM* and this request letter, as "Dual Employees") without the Participating Affiliates registering under the Advisers Act.[51]

In *Murray Johnstone*, the Staff considered an extensive request involving both Participating Affiliates and Dual Employees and stated that, based on certain undertakings made by the requesting parties,[52] the Staff would not recommend that the Commission take any enforcement action if (i) the Participating Affiliates provided investment advice to U.S. persons through a U.S.-registered foreign investment adviser without themselves registering under the Advisers Act and (ii) the registered adviser did not comply with certain provisions of the Advisers Act and the rules thereunder (namely those set forth in *NMG*) with respect to its foreign clients

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[49] See id. In The National Mutual Group, SEC No-Action Letter, 1993 SEC No-Act. LEXIS 384 (March 8, 1993) (hereinafter, *NMG*) the Staff specifically identified those provisions of the Advisers Act and the rules promulgated thereunder, that need not be complied with by a foreign, U.S.-registered investment adviser in respect of its non-U.S. activities. See *NMG* at *6.

[50] See *MAM* at *8. 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 all of the recordkeeping requirements of Rule 204-2 with respect to its foreign clients, whereas in *NMG* the registered advisers did not undertake to comply with certain provisions of Rule 204-2 with respect to their foreign clients. As in the case of the Murray Johnstone Group in *Murray Johnstone*, Royal Bank, while seeking assurances from the Staff based in part on *MAM*, is, in the area of recordkeeping, making the undertakings made in *NMG*.

[51] See id. at *8.

[52] Royal Bank makes substantially the same undertakings herein.

provided that the acts or omissions of the registered adviser involved no conduct or had no effects in the United States, or had any effect on the U.S. clients of the registered adviser.[53]

In John W. Henry & Co.,[54] the Commission declared that it would not require a domestic registered investment adviser to treat as an "associated person" an affiliate that neither controls[55] nor is controlled by the registered investment adviser provided that (i) any officer, director or employee of such affiliate who has access to the investment recommendations of the registered investment adviser or information concerning such recommendations prior to their effective dissemination will be deemed to be an "associated person" of the registered investment adviser, (ii) if an affiliate employs any officer, director or employee identified in clause (i) above, then such affiliate agrees to provide the Commission with access to such affiliate's books and records to the extent necessary to examine, presumably, the investment advisory business of the registered investment adviser and any affiliates engaged in the investment advisory business, and (iii) such affiliate agrees to instruct all officers, directors and employees identified in clause (i) above to cooperate fully with the Commission in such examinations.

We believe that the proposed activities of the Registered Adviser are sufficiently similar to those activities engaged in by the requesting parties in the no-action letters described above to merit a similar no-action response in the present matter. With the exception of our requests concerning the exercise by the Royal Trust Companies of their fiduciary powers in respect of the Offshore Trusts, we believe that the activities proposed herein are similar in all material respects to those activities for which the Staff did not recommend enforcement action in *Murray Johnstone*. We believe, however, that, as in the case of *John Henry*, no meaningful regulatory purpose would be served by requiring the Registered Adviser to deem the Royal Trust Companies as "associated persons" provided that, the Commission can still monitor the activities of all employees of the Royal Trust Companies engaged in the selection, retention, removal, approval or recommendation of investment advisers to the Offshore Trusts as set forth herein.[56]

* * * * *

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[53] See *Murray Johnstone* at *5.

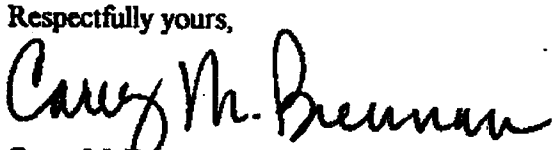
[54] SEC No-Action Letter, 1996 SEC No-Act. LEXIS 771 (September 20, 1996)(hereinafter *John Henry*).

[55] For purposes of the Advisers Act, "control" means "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with the company." 15 U.S.C. § 80b-2(a)(12).

[56] See text accompanying note 23 supra.

For the reasons and the undertakings set forth above, we respectfully request your assurances that the Staff will not recommend to the Commission that it take enforcement action if Royal Bank and its affiliates engage in the activities proposed in this request letter. If for any reason the Staff reaches the preliminary conclusion that it will not be able to take the no-action positions or provide the assurances we are requesting, we would appreciate your so advising us so that we may discuss the matter with you further. In accordance with the Commission's Interpretive Release IA-281, we have provided you with one original and seven copies of this letter. If you desire any further information, please call me at the number set forth above or Luke J. Bergstrom at (412) 394-7906.

Respectfully yours,



Carey M. Brennan

EXHIBIT A

ABRIDGED ORGANIZATIONAL CHART

Registered Adviser Structure
(100% Ownership)

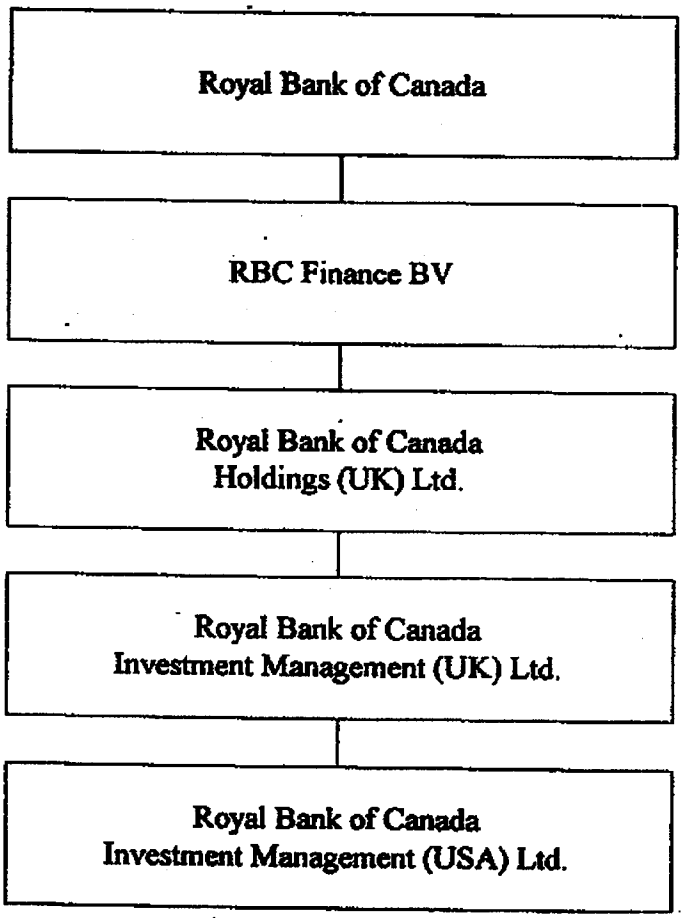


EXHIBIT B

FORM OF APPOINTMENT OF AGENT

(See attached)

IRREVOCABLE APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS BY CORPORATION

THIS FORM SHALL BE FILED IN DUPLICATE ORIGINAL

1. The _____,
(Name of Corporation)
a corporation incorporated under the laws of _____
(Name of jurisdiction under whose laws
_____, and having its principal place of business at
Corporation was organized)
_____, hereby designates and appoints,
(Address in full)
without power of revocation, the United States Securities and Exchange Commission as the agent of said corporation upon whom may be served all process, pleadings, and other papers in any civil suit or action brought against it in any appropriate court in any place subject to the jurisdiction of the United States, where the cause of action (a) accrues on or after August 2, 1954, (b) arises out of any activity, in any place subject to the jurisdiction of the United States, occuring in connection with the conduct of business of said corporation as an investment adviser, and (c) is founded, directly or indirectly, upon the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any rule or regulation under any of said Acts; and

2. Said corporation, _____
(Name of corporation)
hereby consents, stipulates and agrees, without power of revocation, (a) that any such civil suit or action may be commenced against it by the service of process upon the Commission and the forwarding by the Commission of a copy thereof by registered mail to it at the last address of record filed by it with the Commission, (b) that all service of process, pleadings, or other papers upon the Commission and the forwarding of a copy thereof by registered mail to it at the last address of record filed by it with the Commission shall be taken and held in all courts to be as valid and binding as if due personal service had been made upon it, and (c) that service upon the Commission may be effected by delivering copies of said process, pleadings or other papers to the Secretary of the Commission or to any other person designated by the Commission for such purpose, and that the certificate of the Secretary of the Commission or of such other person reciting that said process, pleadings or other papers were received by the Commission and that a copy thereof was forwarded to said corporation at the last address of record filed by it with the Commission shall constitute evidence of such service upon it.

IN WITNESS WHEREOF, the President and Secretary of said corporation _____
_____, by the authority and direction of the Board of Directors of said corporation,
(Name of corporation)
have executed this irrevocable power of attorney, consent, stipulation and agreement for and on behalf of said corporation

at _____ this _____ day of _____ A.D., 19_____.

Attest _____ _____
(Secretary) (Corporate name)

(Corporate Seal) By _____
(President)

APPENDIX I

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