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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
INVESTMENT MANAGEMENT

October 30, 1987

PUBLIC AVAILABILITY DATE: 11-30-87

ACT	SECTION	RULE
1940A	203(a)	---

Gim-Seong Seow
10030 Ravenna Ave., N.E.
Seattle, WA 98125

Dear Mr. Seow:

This responds to your letter of September 5, 1987, in which you ask two questions concerning the applicability of the Investment Advisers Act of 1940 ("Advisers Act") to international investment advisers. The first is whether a foreign investment adviser to exclusively foreign clients is subject to the Advisers Act if the adviser uses clients' funds to invest in securities of United States issuers. The second involves the same facts as the first except the investment adviser is a resident of the United States.

Section 203(a) of the Advisers Act makes it unlawful for any investment adviser (as defined in Section 202(a)(11) of the Advisers Act), unless registered under this section or excepted as provided in 203(b), to make use of the mails or any means or instrumentality of interstate commerce (U.S. jurisdictional means) in connection with his or its business as an investment adviser. On at least two previous occasions, Division staff has indicated that a foreign adviser to foreign clients may, without registering under the Advisers Act, use U.S. jurisdictional means to acquire information about securities of United States issuers, and effect transactions in securities of United States issuers through United States brokers or dealers, for the benefit of the adviser's clients. See Double D. Management, Ltd. (pub. avail. Jan 31, 1983) and BOH Investment Management Co. (Hong Kong) Limited (pub. avail. Jan. 2, 1987).

Regarding your second question, it is our view that a United States resident investment adviser that uses U.S. jurisdictional means to solicit and provide investment advisory services exclusively to foreign clients would, barring an appropriate exemption under Section 203(b), be required to register under the Advisers Act. See Intervest Development Corporation (pub. avail. June 27, 1983). We believe that, in addition to the language of Section 203(a) that by its terms requires registration of such an investment adviser, there are significant policy considerations supporting this position. First, it is common for a governmental entity to regulate the activities of people who are citizens of or residing within its territorial jurisdiction even though they may be carrying on business or providing services to people outside its territorial jurisdiction. Second, it is reasonable for foreigners to expect that a person doing a business in the United States will be subject to United States laws. Third, not requiring resident advisers to exclusively foreign clients to

register, would create a competitive disadvantage for other domestic advisers registered under the Adviser Act who have both United States and foreign clients, and could create a disincentive to advisers to serve U.S. clients. Finally, given the primarily antifraud purposes of the Advisers Act, and relevant case law against allowing the United States to be used as a base for manufacturing fraudulent security devices or schemes for export, even when they are peddled only to foreigners [IIT v. Vencap Ltd., 519 F.2d 1001, 1017 (2d Cir. 1975)], registration of resident advisers who give advice only to foreigners seems warranted. See generally Judd, International Investment Advisers 19 SEC. & COMM. REG., no. 1, at 4 (Jan. 8, 1986).

The distinction in our response here with respect to the registration provisions between foreign advisers to exclusively foreign clients and United States resident advisers to exclusively foreign clients, is consistent with other staff interpretations of the extraterritorial application of the Advisers Act. The staff has indicated generally that a foreign adviser in determining whether it has fewer than fifteen clients for purposes of the exception from the registration provisions of the Advisers Act provided by Section 203(b)(3) may count only United States clients [see Alexander, Holburn, Beaudin & Lang (pub. avail. Aug. 13, 1984) and Murray Johnstone Ltd. (pub. avail. April 17, 1987)], whereas a domestic adviser seeking to rely on this exception must count both United States and foreign clients [see Walter L. Stephens (pub. avail. Nov. 18, 1985) and S&R Management (pub. avail. May 8, 1975)]. The staff also has previously distinguished between foreign and domestic advisers in applying the substantive provisions of the Advisers Act to an affiliate of a United States registered investment adviser with United States clients. Compare TAC America Ltd. (pub. avail. July 25, 1984) and Double D. Management Ltd (pub. avail. Jan 31, 1983) with Prudential-Bache Special Situations Fund, L.P. (pub. avail. Oct. 8, 1984).

We also wish to point out that, generally speaking, all United States registered advisers (domestic and foreign) are subject to the relevant substantive provisions of the Advisers Act with respect to both United States and non-United States clients. See, e.g., the staff's no-action response on Rule 205-3 (pub. avail. Oct. 29, 1986).

To summarize, the foreign-based firm described in your letter would not be subject to Advisers Act registration if it obtains information about securities issued by United States issuers through U.S. jurisdictional means, gives advice abroad about those securities to its non-United States clients, and effects transactions in securities through United States brokers or dealers on behalf of those clients. However, the United States-based firm described in your letter would, unless excepted under Section 203(b), be required to register with the Commission as an investment adviser.

Sincerely,

Joseph R. Fleming

Joseph R. Fleming
Attorney

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Gim-Seong Seow
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September 5, 1987

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Division of Investment Management
Securities & Exchange Commission
450 Fifth NW
Washington, DC 20549

Gentlemen:

I have two major questions concerning the necessity of registering as investment advisors under the Investment Advisors Act of 1940.

1. A Taiwanese-based firm would like to use funds from their Taiwanese clients for investment in U.S. securities. Is the firm required to register under the Act?
   Should the firm decide to expand their services abroad (such as advising clients from Hong Kong, Malaysia, and Singapore, but not in the U.S.), how would that affect its registration requirement?

2. A U.S.-based consulting firm, which does not have any U.S. clients, intends to obtain funds from foreign investors (from East Asian countries) and invest those funds in the U.S. securities markets. Would it be required to register under the Act?

I would appreciate a prompt response to my questions.

Thank you very much.

Very truly yours,