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Investment Advisers Act §§203(a), 203(b)(2)

March 12, 2012

VIA EMAIL AND OVERNIGHT COURIER

Securities and Exchange Commission
Division of Investment Management
Attn: Douglas J. Scheidt, Esq., Associate Director and Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549-0504

Re: Industrial Alliance, Investment Management Inc.
Request for No-Action Assurance

Ladies and Gentlemen:

We are writing on behalf of Industrial Alliance, Investment Management Inc., a corporation incorporated under the laws of Canada ("IAIM"). IAIM seeks assurance from the staff of the Division of Investment Management (the "Staff") that the Staff will not recommend enforcement action to the U.S. Securities and Exchange Commission (the "Commission") under Section 203(a) of the Investment Advisers Act of 1940 (the "Advisers Act") if IAIM does not register with the Commission as an investment adviser under the Advisers Act in the circumstances described below. Statements of fact contained herein are statements of IAIM.

In summary, it is our opinion that IAIM should not be required to register under the Advisers Act because it has no place of business in the United States and its only clients in the United States are insurance companies.

Background

IAIM is a wholly-owned subsidiary of Industrial Alliance Insurance and Financial Services Inc., a life and health insurance holding company in Canada ("Parent"). (This letter refers to Parent and its direct and indirect, wholly-owned or controlled, subsidiaries as the "IA Group.") IAIM is headquartered in Quebec City and also has places of business in Montreal, Toronto, and Vancouver. IAIM is registered as a portfolio manager and investment fund manager with the Autorité des marches financiers in Quebec, its principal regulator, and is registered to conduct investment management activities with the securities regulators in Alberta, British Colombia, Manitoba, New Brunswick, Nova Scotia, Ontario, and Sakatchewan. IAIM is also registered to conduct derivatives activities in Quebec, Ontario and British Columbia. IAIM has no place of business in the United States.

IAIM engages in several types of advisory business in Canada:

- IAIM manages general assets for Parent and other Canadian members of the IA Group, including insurance companies. At December 31, 2011, the general assets of the IA Group managed by IAIM aggregated CDN$23.7 billion.

- IAIM also manages "segregated funds" for Parent. Segregated funds are offered only to Canadian residents in connection with Canadian insurance products. At December 31, 2011, the Parent segregated funds managed by IAIM held aggregate assets valued at CDN$13.7 billion.

- For another Canadian member of the IA Group, IA Clarington Investments Inc. ("IACII"), IAIM manages mutual funds established and domiciled in Canada as well as "pooled funds," which are collective investment funds established in Canada under a Canadian declaration of trust. At December 31, 2011, the IACII mutual and pooled funds managed by IAIM held aggregate assets valued at CDN$8.5 billion.

- IAIM also manages pooled funds that it has established itself in Canada under a Canadian declaration of trust. At December 31, 2011, the IAIM pooled funds held aggregate assets valued at CDN$28.4 million.

- Finally, IAIM manages separate accounts for a small number of unaffiliated Canadian pension funds and other Canadian institutional investors. These are IAIM's only unaffiliated clients. Each of these accounts is managed on a discretionary basis under an individual account agreement. At December 31, 2011, these accounts held aggregate assets valued at CDN$0.6 billion.

In addition to its Canadian clients, since July 2010, IAIM has managed assets of U.S. insurance companies that are also direct or indirect wholly-owned subsidiaries of Parent (the "Insurance Companies").[1] There are currently five Insurance Companies. They were acquired by Parent in 2010 and are headquartered in Georgia and Texas. At December 31, 2011, assets of the Insurance Companies under IAIM's management aggregated US$1.5 billion. IAIM expects that it will manage assets of any additional U.S. insurance company members of the IA Group that are acquired in the future.

The assets IAIM manages for the Insurance Companies are their own assets, principally deriving from premiums paid by insurance customers. They are held to satisfy the obligations of the Insurance Companies' insurance business. IAIM does not hold itself out as providing investment advice to the public in the United States, and its only U.S. clients are these members of the IA Group. Other than the limited use of U.S. jurisdictional means for the purpose of acquiring information about the securities of U.S. issuers and effecting transactions in securities through

[1] Even if IAIM was considered to be engaged in business as an investment adviser in the United States, this has been permissible without investment adviser registration on the basis of §203(b)(3) of the Advisers Act and Rule 203(b)(3)-1(b)(5). Section 203(b)(3) has been eliminated by §403 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

U.S. brokers and dealers, which the Staff has acknowledged is permissible for foreign advisers to non-U.S. clients,[2] IAIM only uses U.S. jurisdictional means in connection with its business as an investment adviser in providing advice to the Insurance Companies.

Discussion

IAIM is a foreign adviser with no place of business in the United States. It has no U.S. clients other than the Insurance Companies. As discussed below, if IAIM had no other clients, it would not be required to register under the Advisers Act. In fact, IAIM does have a small number of other, unaffiliated clients outside the United States. However, we believe that those foreign clients alone should not require IAIM to register under the U.S. Advisers Act. Furthermore, since any benefits of registration would accrue only to IAIM's corporate affiliates, they are greatly outweighed by the costs of doing so.

For Purposes of Section 203(b)(2), IAIM's Only Clients are Insurance Companies

Advisers Act Section 203(b)(2) exempts from registration "any investment adviser whose only clients are insurance companies." The Insurance Companies are "insurance companies" as defined in §202(a)(12) of the Advisers Act (which refers to §2(a)(17) of the Investment Company Act of 1940).[3] Accordingly, if IAIM had no other clients, there would be no need for the requested relief, whether IAIM was a domestic or a foreign adviser. Although the language of §203(b)(2) does not literally cover IAIM because the Insurance Companies are not IAIM's "only" clients, they are IAIM's only clients in the United States. As discussed below, the reach of the Advisers Act does not generally extend to a foreign adviser's activities outside the United States with its foreign clients. Accordingly, IAIM should be considered to have only insurance company clients *for purposes of the Advisers Act* and to be exempt from registration under §203(b)(2).

IAIM's Foreign Clients Should Not By Themselves Force IAIM to Register in the United States

As acknowledged in *Protecting Investors, A Half Century of Investment Company Regulation* (SEC Division of Investment Management (May 1992)), the Commission has little regulatory interest in the foreign activities of foreign advisers. That study states that "the Advisers Act generally would not govern the relationship between a registered foreign adviser and its clients residing outside the United States. In this situation, the United States would not have a significant regulatory interest because the relationship would involve neither clients, nor advisory services rendered, within the United States" (*Id.*, p.231).

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[2] E.g., *Gim-Seong Seow* (November 30, 1987); *Double D Management Ltd.* (January 31, 1983).

[3] Section 2(a) (17): "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

The Commission has followed this policy over the past two decades. For example, in Release IA-1633 (May 15, 1997), the Commission adopted former Rule 203(b)(3)-1(b)(5) under the Advisers Act, permitting an adviser with its principal office and place of business outside the U.S. to count only those clients that were U.S. residents for purposes of the §203(b)(3) exemption from registration for advisers with 14 or fewer clients. In 2004, when the Commission proposed rules to redefine who counted as a "client" for purposes of various exemptions from the Advisers Act, it stated that most of the substantive provisions of the Advisers Act did not apply with respect to the foreign clients of a foreign adviser (Release IA-2266, Section II.B.8.C.3.c (July 20, 2004)). The proposed rules permitted a foreign adviser to a foreign fund to treat the fund as a single client, rather than count each of the fund's investors (*Id.*). This was in part, as the Commission acknowledged, because investors in foreign funds, which are generally governed by the laws of the jurisdiction where the fund or adviser is located, would have no reason to expect the full protection of U.S. securities laws (*Id.*). Most recently, the Commission determined in Release IA-3222 that the foreign clients of a foreign adviser would not affect its eligibility for the new §203(m) exemption, stating that "[Rule 203(m)-1] reflects our long-held view that non-U.S. activities of non-U.S. advisers are less likely to implicate U.S. regulatory interests and that this territorial approach is in keeping with general principles of international comity" (p.77).

The Staff has applied this policy since 1992, particularly in a series of no action letters beginning with *Uniao de Bancos de Brasileiros S.A.* (July 28, 1992) (the "Unibanco Letter"). Citing the *Protecting Investors* study, the Staff granted no-action relief to a registered adviser located outside the U.S., allowing it to avoid compliance with most aspects of the Advisers Act with respect to its foreign clients. In doing so, the Staff stated that many offshore advisers "may be reluctant to register with the Commission, however, because the Advisers Act may prohibit them from engaging in business practices with their foreign clients that are both legal and customary in their home countries. Further, non-United States clients would not expect the Advisers Act to govern their relationship with a non-United States adviser" (*Id.*). The Staff has consistently confirmed this position through a series of subsequent no action letters based on circumstances similar to those in the Unibanco Letter. *E.g., Nat'l. Mutual Life Ass'n. of Australasia, Ltd.* (March 8, 1993), *Mercury Asset Management plc* (April 16, 1993), *Murray Johnstone Holdings Ltd.*, (October 7, 1994), *Royal Bank of Canada* (June 3, 1998).

As discussed above, if IAIM's only U.S. clients, the Insurance Companies, were its only clients, IAIM would be exempt from registration under §203(b)(2), even if they weren't its corporate affiliates. Furthermore, if the exemption of former §203(b)(3) were still available, IAIM's foreign clients would not be counted in determining whether that exemption applied.[4] Given IAIM's lack of a U.S. presence and the lack of a U.S. regulatory interest in IAIM's foreign clients, we do not believe that IAIM should be required to register under the U.S. Advisers Act solely because it has foreign clients.

[4] Former Rule 203(b)(3)-1(b)(5).

The Costs of Registration and Compliance Would Far Outweigh the Benefits

If IAIM was required to register under the Advisers Act, it would still be able to provide advisory services to its Canadian clients in compliance only with Canadian law, not the Advisers Act. *E.g., ABN AMRO Bank N.V.* (July 1, 1997); *Murray Johnstone Holdings Ltd.*; *Mercury Asset Management plc.* Accordingly, it would only have to provide firm brochures, brochure supplements, and other Advisers Act disclosures to insurance companies that – if they were IAIM's only clients – would not receive them because IAIM would not need to be registered. Accordingly, the costs of registration and ongoing compliance would substantially outweigh the need.

Conclusion

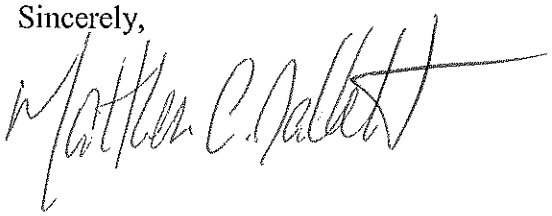
IAIM's only U.S. clients are insurance companies. As evidenced by §203(b)(2), the Commission has no regulatory interest under the Advisers Act in governing the relationship between IAIM and its U.S. insurance company clients. As a foreign adviser with no U.S. place of business that is regulated by foreign authorities with respect to its foreign clients, IAIM presents a strong case for respecting the principles of international comity cited by the Commission. Accordingly, the fact that it has foreign clients should not, alone, require IAIM to register under the U.S. Advisers Act.

Furthermore, the costs of the disclosures and client-oriented compliance required by Advisers Act registration would substantially outweigh the benefits.

Therefore, we request that the Staff provide assurance to IAIM that it will not recommend that the Commission take enforcement action against IAIM if it does not register with the Commission as an investment adviser in the circumstances described above.

If the Staff disagrees with any of the views expressed herein, we would appreciate an opportunity to discuss the matter with the Staff before any written response to this letter is provided. Please direct any questions or comments you have to me at mdallett@edwardswildman.com or (617) 239-0303.

Sincerely,



cc: Christine Vachon