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September 6, 1996

ACT 1CA
SECTIONS 12(d)(1) / 7(d)
RULE
PUBLIC AVAILABILITY 9/10/96

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

Re: Templeton Vietnam Opportunities Fund, Inc.

Ladies and Gentlemen:

We are counsel to Templeton Vietnam Opportunities Fund, Inc. (the "Fund"). The Fund respectfully requests confirmation that the Division of Investment Management will not recommend that the Commission take any enforcement action pursuant to Section 7(d) or 12(d)(1) of the Investment Company Act of 1940, as amended (the "1940 Act") if the Fund invests in Vietnamese companies, investment in which would not otherwise be practicable under Vietnamese law, through the Fund's purchase of 100% of the voting securities of holding companies organized for this purpose.

BACKGROUND

The Fund, a Maryland corporation, is a closed-end management investment company registered under the 1940 Act which was formed to permit U.S. investors and others to participate in the economy of Vietnam primarily through investment in equity securities of Vietnam companies. The investment objective of the Fund is long-term capital appreciation, which it seeks to achieve by investing primarily in the equity securities of Vietnam companies.

The Fund's investment manager is Templeton Asset Management Ltd. (the "Investment Manager"), a Singapore company formerly known as Templeton Investment Management (Singapore) Pte. Ltd., which is an indirect wholly owned subsidiary of Franklin Resources, Inc. The Investment Manager is registered as an investment adviser under the Investment Advisers Act of 1940.

The Fund's prospectus dated September 15, 1994 stated that, under normal conditions, at least 65% of the Fund's total assets will be invested in securities of Vietnam companies. At the time the Fund's registration statement became effective, although securities markets were in the process of being established in Vietnam, there existed an extremely limited number of Vietnam companies available to the Fund for investment. Accordingly, the prospectus stated that, as a non-fundamental investment policy, the Fund could invest up to 35% of its total assets in direct (i.e., not publicly traded) equity investments. In addition, the Fund undertook in its registration statement that if, by October 1, 1997, at least 65% of the value of the Fund's total assets are not invested in securities of Vietnam companies, management of the Fund will call a shareholders' meeting to vote on a proposal either to modify the Fund's investment policies or to liquidate the Fund's assets and distribute the proceeds to shareholders.

The development of a securities market in Vietnam has progressed slowly and the timing for the establishment of a stock exchange is uncertain and subject to the control of the Vietnam government. The Investment Manager believes that Vietnam may not have a functioning stock exchange by October 1, 1997, and that publicly traded securities of Vietnam companies may not be available to the Fund to any significant extent for some time to come. Accordingly, in October 1995, to facilitate the Fund's investment program, the Board approved a change to the Fund's non-fundamental investment policies to increase the percentage of the Fund's assets that may be invested in direct equity investments from 35% to 65% of the Fund's total assets. The Investment Manager believes that the Fund will be able to pursue its investment objective pursuant to its stated investment policies only if direct investments comprise a significant portion of the portfolio. As of March 31, 1996, 51.9% of the Fund's assets were invested in short-term obligations and other temporary investments outside Vietnam, with the remainder held in equity securities of companies in countries such as Hong Kong, Singapore, Indonesia and Thailand, which do not qualify as Vietnam companies but which the Investment Manager believes will experience growth in revenue or income from participation in the development of the economy of Vietnam ("Vietnam-related companies").[1/]

1/ As stated in the prospectus, the Fund considers the term "Vietnam company" to mean a company (i) that is organized under the laws of, or with a principal office in, Vietnam, (ii) for which the principal equity securities trading market is in Vietnam, or (iii) that derives at least 50% of

(continued...)

PROPOSED INVESTMENT

The Investment Manager proposes to invest Fund assets in one or more Vietnam limited liability companies ("LLCs").[2] In this regard, the Investment Manager, with the advice of Vietnam counsel, has determined that the most advantageous method for the Fund to invest in a Vietnam LLC is through a Hong Kong or other foreign holding company, the reasons for which are summarized below. Accordingly, it is proposed that, with respect to LLC investments of the Fund, the Fund would acquire 100% of the equity interest in one or more holding companies (each, a "Holding Company"), each of which would purchase securities of a Vietnamese LLC.[3] The Fund thereafter would make capital contributions to the Holding Companies, which would, in turn, invest in equity and debt securities issued by the LLCs.[4] The

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[1] (...continued)
its revenues or profits from goods produced or sold, investments made, or services performed in Vietnam or that has at least 50% of its assets situated in Vietnam. In addition, during the initial investment period ending October 1, 1997, the Fund is authorized to invest without limit (and thereafter up to 35% of its total assets) in Vietnam-related companies.

[2] LLCs in which the Fund proposes to invest may also have Vietnamese investors, or may be owned entirely by non-Vietnamese investors.

[3] It is expected that, in view of various legal and tax considerations, the holding companies will be organized under the laws of Hong Kong. However, other jurisdictions may be chosen if deemed advisable by the Investment Manager.

[4] Under Vietnamese law, at least 30% of the funding for a "foreign invested enterprise" (i.e., a business enterprise in which non-Vietnamese persons invest) must consist of equity capital from the enterprise participants, and up to 70% may consist of loans either from the enterprise participants or from third parties. We understand that, for various reasons including Vietnamese withholding taxes on dividends, a large percentage of LLC financing often takes the form of loans. The Fund is currently subject to an investment restriction whereby it may not make loans, except that the Fund may purchase and hold debt instruments, enter into repurchase agreements and make loans of portfolio

(continued...)

Fund's Investment Manager would manage each Holding Company's assets, subject to the supervision of the Fund's Board of Directors.

The reasons for the Fund's proposed investment in Vietnam LLCs through foreign Holding Companies can be summarized as follows. First, a Holding Company provides necessary liquidity. Under Article 30 of Decree 18-CP dated April 16, 1993 ("Decree Providing Regulations for Foreign Investments in Vietnam"), a sale of any interest in an LLC requires the approval of the Ministry of Planning and Investment, the Vietnamese regulatory authorities with regard to investments. Additional restrictions apply to transfers of interests in LLCs with Vietnamese investors. Specifically, the interest must first be offered to the other parties to the LLC, and no transfer of an interest in this type of LLC is effective without the unanimous approval of the governing board of the enterprise. None of these conditions would apply to the transfer of an interest in a Holding Company.

Second, the sale or transfer to another investor of an interest in a Holding Company would not be subject to Vietnamese capital gains tax. In contrast, gains from the sale of an interest in a Vietnam LLC would be taxed at the current rate of 25%. In addition, the United States currently does not have a double taxation treaty with Vietnam. The use of the Holding Company structure would allow the Fund to invest through a jurisdiction that has a tax treaty with the United States.

Finally, a Holding Company would limit the Fund's liability to the extent of its investment. In Vietnam the principles of limited liability for investors in an enterprise are not settled, and the liability of a foreign investor may not otherwise be limited to the amount of the investment.

It is proposed that the Fund will own 100% of the equity interest in each Holding Company. The Holding Companies will not issue debt securities. A Holding Company will not have any

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4/(...continued)
securities. It is expected that the Board of Directors will approve, and recommend that shareholders approve, a proposal that this investment restriction be eliminated. That proposal is expected to be submitted to shareholders at the next annual meeting, scheduled for October, 1996. As a condition to the requested no-action relief, the Fund undertakes that all investments by a Holding Company, when aggregated with the Fund's other holdings, would comply with the Fund's then-current investment restrictions.

purpose other than serving as a vehicle for the Fund's investments, and will not have an autonomous investment program. A Holding Company will pay no investment advisory, administration or custody fees in connection with the management of its portfolio, and will charge no sales load or transfer agency fees in connection with the Fund's investment in a Holding Company. Each Holding Company's assets will be managed by the Investment Manager under the supervision of the Fund's Board of Directors. All investments of the Holding Company will be made in accordance with the Fund's stated investment objective, policies and restrictions.[5] Each Holding Company will constitute a "Vietnam company," as defined in the Fund's prospectus, for purposes of the Fund's policy of investing at least 65% of its total assets in securities of Vietnam companies.[6]

SECTION 12(d)(1)

Investments by the Fund in securities issued by the Hong Kong or other Holding Companies that are the subject of this letter may be regarded as investments in investment companies within the meaning of Sections 3(a)(3) and 12(d)(1) of the 1940 Act. The reason for this is that the Holding Companies themselves would invest in securities -- those issued by the LLCs -- and the LLCs would not be majority-owned subsidiaries of the Holding Companies. Accordingly, the securities issued by some of the LLCs would be "investment securities" in the hands of the Holding Companies within the meaning of Section 3(a)(3) of the 1940 Act.

For the reasons set forth below, we believe that the restrictions of Section 12(d)(1) should not be construed as applicable to the Fund's investments in the Holding Companies because they would merely be alter egos of the Fund and conduits through which the Fund would make investments in Vietnam.

Subparagraph (A) of Section 12(d)(1) makes it unlawful for any registered investment company to purchase or otherwise acquire any security issued by any other investment company if, as a result of such transaction, (i) the acquiring company would own more than 3% of the total outstanding voting stock of the acquired company, (ii) the acquiring company would have more than 5% of its assets invested in the acquired company, or (iii) the acquiring company would have more than 10% of its assets invested in the acquired company and all other investment companies.

5/ See, The Thai Fund, (pub. avail. Nov. 3, 1987).

6/ See footnote 1 supra.

Each Holding Company could be viewed as an investment company, as defined in Section 3(a)(3) of the 1940 Act, because up to 100% of its assets would consist of equity and debt securities issued by, and loans made to, LLCs. Accordingly, absent the requested no-action relief, the Fund could be prohibited by Section 12(d)(1) from investing in Holding Companies to an extent greater than the percentage limitations set forth above.

Section 12(d)(1) was amended by Congress in the 1970 amendments to strengthen the regulation of "fund of funds" situations and prescribe specific restrictions that must be met by such funds. The legislative history of the 1970 amendments suggest they were intended to address four potential abuses. See Report of the House Committee on Interstate and Foreign Commerce (H. Rep. No. 1382 at 10-11; 23-25 (Aug. 7, 1970)); Public Policy Implications of Investment Company Growth (Report of the Securities and Exchange Commission, reprinted in H. Rep. No. 2337 at 311-324 (Dec. 2, 1966) ("PPI")):

A. the pyramiding of voting control of the investment company in a manner that puts control in the hands of an individual or group of individuals that have only a nominal financial stake in the constituent companies (PPI at 317);

B. undue influence over portfolio management through the "threat . . . of large scale redemptions" and "loss of advisory fees" to the adviser, and the disruption of the orderly management of the investment company through the maintenance of large cash balances to meet potential redemptions (PPI at 316);

C. the complexity of the structure with the resultant difficulty on the part of the uninitiated stockholder in appraising the true value of his security. Cf, "The Investment Company Act of 1940," Wash. U. Law Quarterly, 303, 325 (1941); and

D. the layering of sales charges, advisory fees, and administrative costs (PPI at 318-20).

As more fully discussed below, none of the potential dangers of fund holding companies, which Congress sought to eliminate when enacting the 1970 amendments to Section 12(d)(1), would be present if the Fund were to invest in an LLC through an investment in a Holding Company.

A. Pyramiding of Voting Control

Under the proposed structure, there would be no possibility that the Holding Companies could be employed as a device for placing control in the hands of an individual or group of individuals who have only a nominal financial stake in all the constituent companies of the group. The Fund would be the only legal and beneficial owner of the shares of each Holding Company.[7] There would be no other shareholders who could potentially be harmed by the Fund's investment in the Holding Company. The threat of pyramiding is therefore not present under the proposed arrangement.

B. Undue Influence on Adviser

There is no possibility that the proposed structure would result in "undue influence" on the adviser of any Holding Company. The historical concern that the acquired company's management will be unduly influenced has focused principally upon the potential liquidity dangers to an acquired investment company from the threat of large-scale redemptions. This in turn could have an adverse impact on the investment adviser to the acquired company due to possible constraints in managing the company's portfolio and the threatened loss of advisory fees.

In this case, the investment adviser for the assets held by each Holding Company would be the same as the Investment Manager for the Fund. Given this identity of management, there would be no concern that portfolio management will be "unduly influenced" by the Fund. Moreover, the loss of advisory fees to the investment adviser is not a concern in this case, again because there is no investment adviser of the Holding Company that is separate or distinct from the Investment Manager of the Fund and no additional advisory fees at the Holding Company level. Moreover, as stated above, each Holding Company would be merely an alter ego of the Fund and a conduit through which the Fund would make investments. Because the Fund would own all the outstanding securities of each Holding Company, if the Fund wished for any purpose to cause a Holding Company to liquidate the securities of that Holding Company and own its assets directly, it would be only a structural change that would not adversely affect any shareholder of the Holding Company. Finally, because the Fund is a closed-end investment company which has no need to maintain sufficient liquidity to honor

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[7] Although the Fund may, in the future, find it advisable to invest in a Holding Company in which the Fund is not the sole investor, it will not do so without first obtaining further no-action assurance from the staff or exemptive relief from the Commission.

redemption requests, it is extremely unlikely that the Fund would have any reason to acquire direct ownership of the assets of any Holding Company.

C. Complexity of Structure

The legal and beneficial owners of each Holding Company (i.e., shareholders of the Fund), will have no difficulty in understanding the nature of their investment. The Holding Companies will be used only as a vehicle for the Fund's investment in Vietnam LLCs. Investors in the Fund can essentially disregard the Holding Companies in considering the value of their investments in the Fund. For all practical purposes, including the calculation the Fund's net asset value, the investments owned by each Holding Company will be treated as if they were owned directly by the Fund. Thus, there will be no complexity of structure of significance to investors in the Fund.

D. Layering of Fees

The final concern in connection with Section 12(d)(1) relates to the duplication of costs. Costs may be duplicated where there are two layers of advisory fees, administrative fees and expenses, custodial fees, transfer agency and related fees and expenses, or a double sales load.

There would be no significant duplicative costs associated with the existence of a Holding Company. There would be no separate investment advisory or administration fees. There would be no separate custody arrangements with respect to the Holding Company's assets, which would be held by the Fund's custodian or a subcustodian appointed by the Fund's Board of Directors in accordance with Rule 17f-5 under the 1940 Act. In addition, there would be no extra transfer agency fees or costs, including dividend disbursement or shareholder communication costs associated with the proposed structure, and the Holding Company would not charge a sales load to the Fund. Moreover, the proposed structure is expected to result in a net savings in taxes and administrative costs for the Fund.

SECTION 7(d)

Section 7(d) of the 1940 Act prohibits certain transactions by foreign investment companies. Specifically,

> No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so

> organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer. . . .

We are of the opinion that Section 7(d) does not apply to the proposed structure and that a no-action position with respect to the issues raised by Section 7(d) in connection with the proposed structure is appropriate and consistent with the purposes and policies of the 1940 Act and the protection of investors for the reasons discussed below.

First, the Fund will be the sole beneficial owner of interests in each Holding Company. As noted above, the Fund will not invest in a Holding Company in which it is not the sole investor without first obtaining further no-action assurance from the staff or exemptive relief from the Commission.

Second, the Fund would control the decision-making processes of each Holding Company. The Investment Manager making the investment decisions on behalf of the Fund will also make investment decisions regarding the assets held through each Holding Company.

Finally, the investment in a Holding Company will not result in any of the potential abuses that Section 7(d) was designed to address. The purpose of the proposed structure is merely to use the Holding Companies as entities through which the Fund will invest in and hold Vietnamese securities rather than to create a foreign investment vehicle to be marketed to U.S. investors (which was the activity intended to be regulated under Section 7(d)). Interests in the Holding Companies will not be offered or sold in the United States.

The proposed investments involve none of the characteristics normally associated with a direct or indirect offering by a foreign investment company. There will be an actual United States issuer (the Fund) that will be fully subject to the provisions of the Securities Act of 1933 (if it offers additional shares) and the 1940 Act, as well as the Securities Exchange Act of 1934, as applicable. Specifically, matters relating to the custody of the Fund's investments, investment advisory activities and other aspects of the Fund's investments in securities of companies will be governed by the 1940 Act.

In addition, as a condition to the relief requested, the Fund will undertake to make the accounts, books and other records

of each Holding Company available for inspection by the staff of the Commission and, if requested, to furnish copies of those records to the staff.

* * *

In light of the foregoing, we are of the opinion that Sections 12(d)(1) and 7(d) should not be construed to prohibit the proposed arrangement. The potential abuses associated with "fund of funds" situations, which Section 12(d)(1) is designed to eliminate, and the offering in the United States of an unregistered foreign investment company, which Section 7(d) is designed to eliminate, are not present or relevant as applied to the proposed structure. A no-action position by the Commission staff would therefore be consistent with the protection of investors and the purposes of Sections 12(d)(1) and 7(d).

The proposed no-action relief is also consistent with applicable precedent. See The Scandinavia Fund, Inc. (pub. avail. November 24, 1986), The Thai Fund, Inc. (pub. avail. November 30, 1987), The Spain Fund, Inc. (pub. avail. March 28, 1988).[8/]

8/ The arrangement proposed by the Fund differs from those described in the letters cited above in that the Fund may invest in more than one Holding Company, and those letters contemplated a single investment vehicle. The difference is based on the fact that the Investment Manager has identified at least one existing Holding Company which it is considering as an investment for the Fund, and may seek to purchase or organize others in the future. Accordingly, the ability to invest in more than one Holding Company could prove to be important to the Fund in that it could eliminate unnecessary administrative burdens of reorganizing existing entities into a single Holding Company. We do not believe that the possibility of more than one Holding Company should be considered a significant difference between the instant request and the relevant precedents. As discussed above, each Holding Company would be an alter ego for the Fund, functioning exclusively as a conduit through which the Fund would invest in Vietnamese securities.

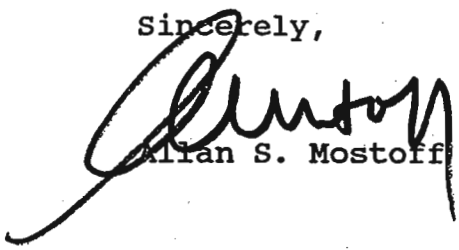
Conclusion

The proposed investment will not result in any of the abuses that Sections 12(d)(1) and 7(d) were designed to protect against. A Holding Company is merely a vehicle which will enable the Fund to make investments otherwise unavailable, from a practical standpoint, to non-Vietnamese nationals under Vietnam law. We believe, therefore, that a no-action position regarding the investment by the Fund in Holding Companies for the purpose of acquiring interests in Vietnam LLCs as described herein is appropriate, in accord with precedent, and consistent with the purposes and policies of the 1940 Act and the protection of investors.

Under the circumstances described, we request confirmation from the Division that it will not recommend that the Commission take any enforcement action pursuant to Section 7(d) or 12(d)(1) if a Holding Company is used as a vehicle through which the Fund would purchase an interest in a Vietnam LLC.

In accordance with Release No. 33-6269 (December 5, 1980), seven additional copies of this letter are enclosed herewith. If you should have any questions or require any additional information concerning this request, please call me at (202) 626-3310, Alan Rosenblat at (202) 626-3332 or William J. Kotapish at (202) 626-3409.

Sincerely,



Allan S. Mostoff

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SEP 10 1996

Ref. No. 96-454-CC
Templeton Vietnam
Opportunities Fund, Inc.
File No. 811-8632

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

By letter dated September 6, 1996, you seek assurance that the staff will not recommend enforcement action to the Commission under Sections 12(d)(1) or 7(d) of the Investment Company Act of 1940 (the "Investment Company Act"), if the Templeton Vietnam Opportunities Fund, Inc. (the "Fund") purchases 100% of the securities of holding companies that invest in Vietnamese limited liability companies ("Vietnamese LLCs"), as described in your letter.

Background

The Fund is a closed-end management investment company registered under the Investment Company Act. The Fund's investment objective is long-term capital appreciation, which it seeks to achieve by investing primarily in the equity securities of Vietnam Companies.[1] The Fund's investment adviser is Templeton Asset Management Ltd. (formerly known as Templeton Investment Management (Singapore) Pte. Ltd.) (the "Adviser"), a Singapore company that is an indirect wholly-owned subsidiary of Franklin Resources, Inc.[2]

You represent that the Fund's prospectus, dated September 15, 1994, states that, under normal conditions, at least 65% of the Fund's total assets would be invested in securities of Vietnam Companies. The prospectus also states that, as a non-fundamental investment policy, the Fund could invest up to 35% of its total assets in direct (i.e., not publicly traded) equity investments. The Fund also undertook in its registration statement that if at least 65% of the value of the Fund's total assets were not invested in securities of Vietnam Companies by October 1, 1997, the Fund's management would call a shareholders' meeting to vote on a proposal either to modify the Fund's investment policies or to liquidate

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[1] The Fund's prospectus defines a "Vietnam Company" as a company (i) that is organized under the laws of, or with a principal office in, Vietnam, (ii) for which the principal equity securities trading market is Vietnam, or (iii) that derives at least 50% of its revenues or profits from goods produced or sold, investments made, or services performed in Vietnam, or that has at least 50% of its assets situated in Vietnam. During the initial investment period ending October 1, 1997, the Fund is authorized to invest without limit (and thereafter up to 35% of its total assets) in equity securities of companies that do not qualify as Vietnam Companies (such as Hong Kong, Singapore, Indonesia, and Thailand companies), but which the Adviser believes will experience growth in revenue or income from participation in the development of the economy of Vietnam.

[2] The Adviser is registered with the Commission under the Investment Advisers Act of 1940.

the Fund's assets and distribute the proceeds to shareholders. You state that the Adviser believes that there may not be a functioning stock exchange in Vietnam, nor a sufficient number of publicly-traded Vietnamese issuers available for investment by the Fund, by October 1, 1997. Thus, in October 1995, the Board approved a change to the Fund's non-fundamental investment policies to increase the percentage of Fund assets that may be invested in direct equity investments from 35% to 65% of the Fund's total assets. You state that the Adviser believes that the Fund will be able to achieve its investment objective only if a significant portion of the Fund's portfolio consists of direct investments.

Proposal

The Adviser proposes to invest Fund assets in one or more Vietnamese LLCs. For reasons summarized below, the Adviser has determined that the most advantageous method for the Fund to make this investment is by acquiring 100% of the equity interest in one or more Hong Kong or other foreign holding companies (each a "Holding Company"), each of which would purchase securities of a Vietnamese LLC.[3] The Adviser would manage each Holding Company's assets, subject to the supervision of the Fund's Board of Directors.

You represent that use of Holding Companies to invest in the Vietnamese LLCs will provide necessary liquidity;[4] result in tax savings for the Fund and its investors;[5] and limit

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[3] You state that it is expected that, in view of various legal and tax considerations, the Holding Companies will be organized under the laws of Hong Kong. Other jurisdictions may, however, be chosen if the Adviser deems it advisable. You also state that although the Fund may find it advisable to invest in a Holding Company in which the Fund is not the sole investor, it will not do so without first obtaining further no-action assurance from the staff or exemptive relief from the Commission. We do not express any view whether the staff would grant such no-action relief, or support any such exemptive application.

[4] You state that under Vietnamese law, the sale of any interest in a Vietnamese LLC requires government approval. Additional restrictions apply to transfers of interests in Vietnamese LLCs with Vietnamese investors. Specifically, the interest must first be offered to the other parties to the Vietnamese LLC, and no transfer of an interest in a Vietnamese LLC is effective without the unanimous approval of the governing board of the enterprise. None of these conditions would apply to the transfer of an interest in a Holding Company.

[5] You state that the sale or transfer to another investor of an interest in a Holding Company would not be subject to Vietnamese capital gains tax. In contrast, gains from the sale of an interest in a Vietnamese LLC would be taxed at the current rate of 25%. In addition, the United States currently does not have a double taxation treaty with Vietnam, whereas the use of the Holding Company structure would allow the Fund to invest through a jurisdiction that has such a tax treaty.

the Fund's liability to the extent of its investment.[6] A Holding Company will not have any purpose other than serving as a vehicle for the Fund's investments, and will not have an autonomous investment program. A Holding Company will pay no investment advisory, administration, or custody fees in connection with the management of its portfolio, and will charge no sales load or transfer agency fees in connection with the Fund's investment in a Holding Company. The Fund's Adviser will manage each Holding Company's assets, under the supervision of the Fund's Board of Directors, in accordance with the Fund's stated investment objectives, policies, and restrictions. You state that each Holding Company will constitute a "Vietnam Company," as defined in the Fund's prospectus, for purposes of the Fund's policy of investing at least 65% of its total assets in securities of Vietnam Companies.[7] You represent that a Holding Company will not issue debt securities, and will not issue any securities in the United States.

Analysis

Section 12(d)(1)

You acknowledge that because each Holding Company will invest up to 100% of its assets in equity and debt securities issued by, and loans made to, Vietnamese LLCs, each Holding Company could be viewed as an investment company as defined in Section 3(a)(3).[8]

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[6] You assert that in Vietnam, the principles of limited liability for investors in an enterprise are not settled, and the liability of a foreign investor may not otherwise be limited to the amount of the investment.

[7] As a condition to the requested no-action relief, the Fund undertakes that all investments by a Holding Company, when aggregated with the Fund's other holdings, would comply with the Fund's then-current investment restrictions.

[8] Section 3(a)(3) defines an "investment company" to include any issuer that

> is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

"Investment securities" do not include securities issued by majority-owned subsidiaries of the owner that are not investment companies. You state that Vietnamese LLCs would not be majority-owned subsidiaries of the Holding Companies.

If this were the case, Section 12(d)(1) could be construed to prohibit the Fund from holding the proposed interest in each Holding Company.[9]

Congress included Section 12(d)(1) in the Investment Company Act to prevent a registered investment company from controlling other investment companies and creating complicated pyramidal structures. Congress believed that a fund holding company's exercise of control over another investment company could result in a number of abuses, including: (1) the pyramiding of voting control in a manner that puts control in the hands of those having only a nominal stake in the controlled investment company, to the disadvantage of the controlled investment company's minority owners; (2) the undue influence over the adviser of the controlled company through the threat of large scale redemptions and loss of advisory fees to the adviser, resulting in the disruption of the orderly management of the company through the maintenance of large cash balances to meet potential redemptions; (3) the difficulty on the part of an unsophisticated shareholder in appraising the true value of his security due to the complex holding company structure; and (4) the layering of sales charges, advisory fees, and administrative costs.[10]

You argue that Section 12(d)(1) should not be construed to apply to the Fund's investments in the Holding Companies because the Holding Companies would merely be alter egos of the Fund and conduits through which the Fund would make investments in Vietnam.[11] You assert that none of the abuses that Section 12(d)(1) is designed to address would be implicated if the Fund were to invest in a Vietnamese LLC through a 100% investment in a Holding Company.

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[9] Section 12(d)(1)(A) makes it unlawful for any registered investment company to purchase or otherwise acquire any security issued by any other investment company if, as a result of such transaction, (i) the acquiring company would own more than 3% of the total outstanding voting stock of the acquired company, (ii) the acquiring company would have more than 5% of its assets invested in the acquired company, or (iii) the acquiring company would have more than 10% of its assets invested in the acquired company and all other investment companies.

[10] See, e.g., Mutual Series Fund Inc. (pub. avail. Nov. 7, 1995); The Phoenix Funds (pub. avail. Oct. 2, 1991); Public Policy Implications of Investment Company Growth, reprinted in H.R. Rep. No. 2337, 89th Cong., 2d Sess. 314-24 (1966).

[11] See, e.g., The Spain Fund, Inc. (pub. avail. Mar. 28, 1988); The Thai Fund, Inc. (pub. avail. Nov. 30, 1987); and The Scandinavia Fund, Inc. (pub. avail. Nov. 24, 1986). The arrangement proposed by the Fund differs from those described in the letters cited above in that the Fund may invest in more than one Holding Company, and those letters contemplated a single investment vehicle. You state that this difference results from the fact that the Adviser has identified at least one existing Holding Company which it is considering as an investment for the Fund, and may seek to purchase or organize others in the future.

First, you maintain that there would be no possibility that the Holding Companies could be employed as a device for placing control in the hands of an individual or group of individuals who have only a nominal financial stake in the controlled companies, because the Fund would be the only legal and beneficial owner of the equity securities of each Holding Company. Second, you state that because each Holding Company is essentially a pass-through vehicle and the alter ego of the Fund, there is no threat of undue influence over the Holding Company. Third, you argue that the Fund's shareholders will have no difficulty understanding the nature of their investment because the Holding Companies are, in effect, pass-through vehicles that Fund investors can essentially disregard. Finally, you state that there would be no significant duplicative costs associated with the existence of a Holding Company because there would be no separate investment advisory or administration fees, no separate custody arrangements, no extra transfer agency fees or costs, including dividend disbursement or shareholder communication costs associated with the proposed structure, and the Holding Company would not charge a sales load to the Fund. Moreover, the proposed tax structure is expected to result in a net savings in taxes and administrative costs for the Fund.

Section 7(d)

You assert that the Fund's investment in the Holding Companies should not be viewed as an indirect offering of the Holding Companies' shares in the United States, in violation of Section 7(d).[12] You state that the purpose of the proposed structure is to use the Holding Companies as entities through which the Fund will invest in and hold Vietnamese securities, rather than to create a foreign investment vehicle to be marketed to U.S. investors. Moreover, you state that the proposed investments involve none of the characteristics normally associated with a direct or indirect offering by a foreign investment company.[13]

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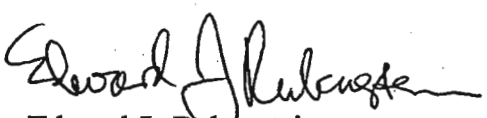
[12] Section 7(d) of the Investment Company Act provides in part that

> No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer.

[13] You state that the Fund will undertake to make the accounts, books, and other records of each Holding Company available for inspection by the Commission staff and, if requested, to furnish copies of those records to the staff.

Based on the facts and representations in your letter, we would not recommend that the Commission commence enforcement action under Sections 12(d)(1) or 7(d) of the Investment Company Act if the Fund purchases 100% of the securities of Holding Companies that invest in Vietnamese LLCs, as described in your letter. Because this response is based on the facts and representations in your letter, you should note that different facts or representations may require a different conclusion. Further, this response expresses the Division's position on enforcement action only and does not purport to express any legal conclusions on the issues presented.



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