

Investment Advisers Act of 1940 – Section 203(a)
Credit Agricole Asset Management Alternative Investments, Inc.

August 7, 2006

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 20066201132
Credit Agricole Asset
Management Alternative
Investments, Inc.
File No. 132-3

Your letter dated July 11, 2006 requests our assurance that we would not recommend enforcement action to the Commission against Credit Agricole Asset Management Alternative Investments, Inc. (“CAAM-AI, Inc.”) under section 203(a) of the Investment Advisers Act of 1940 (the “Act”) if CAAM-AI, Inc. does not register with the Commission as an investment adviser. As we explain below, based on the facts and representations in your letter, we believe that CAAM-AI, Inc. would be prohibited by section 203A(1) of the Act from registering with the Commission as an investment adviser.

Facts

You state the following: CAAM-AI, Inc., a Delaware corporation with its principal office and place of business in Chicago, is an indirect, wholly owned subsidiary of Credit Agricole Asset Management (“CAAM”). CAAM is the asset management subsidiary of CA Group, a network of banks headed by Credit Agricole SA. CAAM operates its alternative investment business through a group of subsidiaries located in Europe and the United States (collectively, the “CAAM-AI Group”) and through other affiliates located in Asia, the Middle East and elsewhere.¹ The CAAM-AI Group

¹ You represent the following: The CAAM-AI Group consists of CAAM-AI, Inc., Credit Agricole Asset Management Alternative Investments Services, Inc. (“CAAM-AI Services”), Credit Agricole Asset Management Alternative Investments, SAS (“CAAM-AI, SAS”), Credit Agricole Asset Management Alternative Investments, SAS (London Branch) (“CAAM-AI, SAS LB”), Credit Agricole Asset Management Alternative Investments, Ltd. (“CAAM-AI, Ltd.”), and Credit Agricole Alternative Investment Products Group SGR S.p.A. (“CA-AIPG Milan”). CAAM indirectly owns 100% of CAAM-AI, Inc., CAAM-AI Services, CAAM-AI, SAS, CAAM-AI, SAS LB, and CAAM-AI, Ltd. CAAM indirectly owns 30% of CA-AIPG Milan, and other subsidiaries of Credit Agricole SA own the remaining 70%. CAAM-AI, Inc. and CAAM-AI Services are the only CAAM-AI Group entities that are located in the United States, and CAAM-AI Services does not provide investment advisory services.

manages various funds of hedge funds, which invest in hedge funds managed by persons located in the United States and Europe, and one member of the CAAM-AI Group, CAAM-AI, Ltd., also presently manages one managed account program organized in Bermuda (the funds of hedge funds and managed account program, collectively, the “Funds”). None of the Funds is organized in the United States, and none of the Funds permits investments by persons residing in the United States or by any person defined as a “U.S. person” under Regulation S under the Securities Act of 1933. The CAAM-AI Group does not serve as an investment adviser to any investment company registered under the Investment Company Act of 1940 (the “Company Act”).

CAAM-AI, Inc. provides advice only to three of its affiliates in the CAAM-AI Group and that advice relates only to the Funds. In particular, CAAM-AI, Inc. provides advice to CAAM-AI, Ltd., CA-AIPG Milan and CAAM-AI, SAS, which are investment managers located outside of the United States and are regulated by non-U.S. regulatory bodies having jurisdiction over their activities.² CAAM-AI, Inc. provides the following services to CAAM-AI, Ltd., CA-AIPG Milan and CAAM-AI, SAS: (i) identifying the universe of investment funds organized outside of the United States that are managed by managers located in the United States from a group of approximately 5,000 private investment funds and hedge funds; (ii) on a weekly or more frequent basis, recommending for consideration for inclusion in the various funds of funds, a “short list” of approximately 150 funds, including advice tailored to assist CAAM-AI, Ltd., CA-AIPG Milan and CAAM-AI, SAS in determining for each fund of funds which underlying funds it should invest in as well as the percentage of its assets it should invest in various underlying funds; (iii) conducting due diligence on the managers of such funds; (iv) providing reports on each such manager, including the manager’s organization, investment process and risk controls; and (v) providing research on industry trends.³

CAAM-AI, Ltd., CA-AIPG Milan and CAAM-AI, SAS have ultimate decision-making authority pursuant to their investment management contracts with the individual Funds. CAAM-AI, Inc. does not have the authority to decide which securities, *i.e.*, interests in the underlying hedge funds, to purchase or sell for CAAM-AI Ltd., CA-AIPG Milan or CAAM-AI, SAS, and CAAM-AI, Inc. is not responsible for arranging or effecting the purchase or sale of interests in the fund of hedge funds. CAAM-AI, Inc. also does not have the authority to decide which managers to hire or fire for the managed account program.

² You represent that CAAM-AI, Ltd. is exempt from registration by the Bermuda Monetary Authority but generally is subject to regulation and supervision in Bermuda by the Minister of Finance of Bermuda. You further represent that CAAM-AI, SAS is regulated in France by the Autorité de Marchés Financiers and that CA-AIPG Milan is regulated in Italy by the Bank of Italy.

³ You represent that CAAM-AI, Inc. provides similar advice to the managed account program. Managers are selected for portions of the assets in the managed account program, but the assets are not invested in the hedge funds themselves.

Analysis

Section 203(a) of the Act generally provides that it is unlawful for any investment adviser, unless registered under the section, to make use of the mails or any instrumentality of interstate commerce (U.S. jurisdictional means) in connection with his or its business as an investment adviser.⁴ Section 203A(a)(1) of the Act, however, prohibits certain investment advisers from registering under section 203(a). Section 203A(a)(1) of the Act provides that:

No investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business⁵ shall register under section 203, unless the investment adviser -- (A) has assets under management of not less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; or (B) is an adviser to an investment company registered under [the Company Act]

Section 203A(a)(2) of the Act defines “assets under management” to mean “the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.” Instruction 5.b(3) to Part 1A of Form ADV states that a person provides “continuous and regular supervisory or management services with respect to an account” if that person: (a) has discretionary authority⁶ over and provides ongoing supervisory or management services with respect to the account; or (b) does not have discretionary authority over the account, but has ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments that the account may purchase or sell and, if such recommendations are accepted by the client, the person is responsible for arranging or effecting the purchase or sale.

Based on the facts and representations in your letter, CAAM-AI, Inc. would be prohibited by section 203A(a)(1) from registering with the Commission.⁷ You represent

⁴ Section 203(b) of the Act excludes certain investment advisers from the registration requirements.

⁵ An adviser is "regulated or required to be regulated" in the state in which it has its principal office and place of business if that state has enacted an investment adviser statute. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997).

⁶ The glossary of terms in Form ADV generally defines “discretionary authority” as the authority to decide which securities to purchase and sell for the client or to decide which investment advisers to retain on behalf of the client.

⁷ We note that the antifraud provisions of section 206 of the Act apply to all investment advisers whether they are required to register with the Commission or not.

that CAAM-AI, Inc., which maintains its principal office and place of business in Illinois, is regulated or required to be regulated as an investment adviser in Illinois for purposes of section 203A(a)(1).⁸ You represent further that CAAM-AI, Inc. does not act as an adviser to an investment company registered under the Company Act. CAAM-AI, Inc. has no assets under management because it does not provide continuous and regular supervisory or management services. You represent that CAAM-AI, Inc. does not have the authority to decide which securities, i.e., underlying funds, to purchase or sell for CAAM-AI Ltd., CA-AIPG Milan or CAAM-AI, SAS, is not responsible for arranging or effecting the purchase or sale of interests in the fund of hedge funds, and does not have the authority to decide which managers to hire or fire for CAAM-AI, Ltd., CA-AIPG Milan or CAAM-AI, SAS or for the managed account program. As a result, CAAM-AI, Inc. would be prohibited by section 203A(1) of the Act from registering with the Commission as an investment adviser.

Sara Crovitz
Senior Counsel

See Goldstein v. SEC, 451 F.3d 873, 2006 U.S. App LEXIS 15760 at *7 (D.C. Cir. 2006).

⁸ See supra n. 5. Section 8A of the Illinois Securities Law of 1953 generally requires investment advisers to register. You represent that CAAM-AI, Inc. is exempt from registration because, during the preceding twelve consecutive months, CAAM-AI, Inc. has not had more than five clients in Illinois. See Section 130.805 Regulations under the Illinois Securities Law of 1953. Telephone conversation between Sara P. Crovitz of the staff and Wesley G. Nissen, counsel to CAAM-AI, Inc., on August 7, 2006.

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Re: Credit Agricole Asset Management Alternative Investments, Inc.

Ladies and Gentlemen:

We are writing to you on behalf of our client, Credit Agricole Asset Management Alternative Investments, Inc. ("CAAM AI, Inc."). We are requesting your assurance that the staff (the "Staff") of the Securities and Exchange Commission (the "SEC") would not recommend enforcement action if CAAM AI, Inc. undertakes the activities described herein without registering under the Investment Advisers Act of 1940, as amended (the "Advisers Act") subject to the representations and undertakings described below.

I. Introduction

Background information relating to CAAM AI, Inc. and its affiliates is provided below in Section II of this letter. Such background information relates to the organizational structure, business activities, and regulation by foreign regulatory authorities of these entities. Section III of this letter describes the ambiguous regulatory circumstances that necessitate no-action relief. In addition, Section III also contains an analysis of the reasons why, without the requested relief, CAAM AI, Inc. would have to register under the Advisers Act and why it would be appropriate for the Staff to recommend to the SEC that no action be taken if CAAM AI, Inc. does not register as an investment adviser under the Advisers Act. Section IV sets forth the representations and undertakings of CAAM AI, Inc. in connection with this request for relief. Lastly, Section V summarizes the analysis and conclusions found in Section III.

II. Background

Organizational Structure

Credit Agricole SA is the lead bank of a group of banks that includes a network of French regional banks and a number of French and international bank and financial services subsidiaries ("CA Group"). CA Group is the largest banking group in France and one of the largest banking

groups in the world based on shareholders' equity. As of December 31, 2004, on a consolidated basis, Credit Agricole SA had total assets of 815.3 billion Euros, 405.8 billion Euros in funds under management and 24.9 billion Euros in shareholders' equity. Credit Agricole SA's shares are listed on the Premier marché of Euronext Paris, which is France's principal securities exchange.

Credit Agricole Asset Management ("CAAM") is the asset management subsidiary of CA Group and has several investment centers worldwide including Paris, London, Milan, Madrid, Hong Kong, Singapore, Tokyo and Seoul. As of December 31, 2005, CAAM had 491.2 billion Euros in assets under management and 2063 employees including 530 professionals dedicated to portfolio management. CAAM is among the leaders in Europe in several key asset management areas.

CAAM indirectly through Credit Agricole Asset Management Alternative Investments Holding S.A. ("CAAM AIH") owns 100% of CAAM AI, Inc., Credit Agricole Asset Management Alternative Investments Services, Inc. ("CAAM AI Services"), Credit Agricole Asset Management Alternative Investments, SAS ("CAAM AI SAS"), Credit Agricole Asset Management Alternative Investments, SAS (London Branch) ("CAAM AI, SAS LB"), and Credit Agricole Asset Management Alternative Investments, Ltd. ("CAAM AI Ltd."). CAAM AIH owns 30% of Credit Agricole Alternative Investment Products Group SGR S.p.A. ("CA AIPG Milan") with the remaining 70% being held by other subsidiaries of Credit Agricole SA. CAAM AI Services, CAAM AI SAS, CAAM AI, SAS LB, CA AIPG Milan and CAAM AI Ltd. hereinafter collectively are referred to as the "Participating Affiliates."¹

The alternative investment business initially was established in June, 1992 as a division of CAAM. In November, 2001, CAAM consolidated all of its alternative investment activities into a group of subsidiaries, the Credit Agricole Asset Management Alternative Investments Group ("CAAM AI Group"), which now includes CAAM AI, Inc., CAAM AI Services, CAAM AI SAS, CAAM AI, SAS LB, CAAM AI Ltd. and CA AIPG Milan. Overall, CAAM operates its alternative investment business through the CAAM AI Group and through other affiliates located in Asia, the Middle East and elsewhere.

Two entities within the CAAM AI Group are located in the United States, CAAM AI, Inc. and CAAM AI Services. CAAM AI, Inc., a Delaware corporation with its office and principal place of business in Chicago, Illinois, was formed on May 20, 1999² and was acquired

¹ CAAM owns 100% of CAAM AIH, a company organized and existing under the laws of France. CAAM AIH is the holding company that directly owns 100% of CAAM AI, Inc. and the Participating Affiliates.

² CAAM AI, Inc. originally was incorporated under the name Alternative Investment Managers Corp.

by CAAM in 2001.³ CAAM AI, Inc. is regulated by the Commodity Futures Trading Commission (the "CFTC") as a commodity trading advisor ("CTA") and commodity pool operator ("CPO") and is a member of the National Futures Association. CAAM AI Services is a Delaware corporation formed on May 13, 1997.⁴ As of December 31, 2005, CAAM AI, Inc. had eleven employees and CAAM AI Services had nineteen employees. The unaudited revenues for CAAM AI, Inc. and CAAM AI Services as of December 31, 2005 were 35.7 million United States Dollars and 18.6 million United States Dollars, respectively.

The remaining entities within the CAAM AI Group are located outside the United States and are overseen by various regulatory bodies having jurisdiction over their activities. CAAM AI SAS is an asset management company domiciled in Paris and is registered with the Autorité des Marchés Financiers (the "AMF"). CAAM AI, SAS LB is the London based branch of CAAM AI SAS. CAAM AI, SAS LB is regulated by the Financial Services Authority (the "FSA") and serves as a consultant to CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan. CAAM AI Ltd. is a Bermuda exempted company and is subject to supervision by the Minister of Finance of Bermuda. CA AIPG Milan is based in Milan and is regulated by the Bank of Italy.

Activities of the CAAM AI Group

The CAAM AI Group manages various funds of hedge funds for investment by foreign clients.⁵ These funds of funds invest in hedge funds of managers located in the United States and Europe. The CAAM AI Group has no US clients and does not permit investments in these vehicles by US clients. Consistent with the foregoing, the CAAM AI Group does not serve as adviser to any company registered under the Investment Company Act of 1940, as amended. Within the CAAM AI Group, each entity performs a variety of functions in connection with these investment vehicles, such as due diligence, risk management, marketing and administrative services.

CAAM AI Ltd. and CAAM AI SAS manage funds of hedge funds seeking optimal risk-adjusted returns consistent with each fund's mandate. CAAM AI SAS acts as the investment manager for all French domiciled private investment funds. CA AIPG Milan is an investment manager for several Italian domiciled funds. CAAM AI Ltd. acts as the investment manager for

³ As a result of this acquisition, CAAM recognized the benefit to its foreign clients of having an affiliate located in the United States, which would have greater access to fund managers located in the United States. CAAM AI, Inc. was not acquired to gain access to US clients.

⁴ CAAM AI Services originally was incorporated under the name Segespar Investment Services, Inc.

⁵ The Staff previously has taken the position that the definition of a "U.S. Person" contained in Rule 902(k) of Regulation S under the Securities Act of 1933, as amended, can provide guidance for purposes of determining what constitutes a "U.S. Person" under the Advisers Act. For purposes of this letter, we use the term US client to mean U.S. Persons as so defined in Rule 902(k) and foreign client to mean any person that is not a U.S. Person.

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offshore funds that are domiciled outside of France and Italy. CAAM AI Ltd. also currently has a managed account program which is organized in Bermuda. This managed account program hires independent investment advisers to manage segregated portfolios of assets drawn from accounts participating in the program. As managers for these funds, CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan have been appointed investment managers by the respective funds, and are named accordingly in the corresponding fund prospectuses or offering documents. In all, the managers within the CAAM AI Group manage a total of thirty-five (35) funds and one (1) managed account platform (hereinafter referred to as the "Funds"). None of the Funds are located in the United States.

In constructing the investment portfolios of the Funds, CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan rely on CAAM AI, Inc. and CAAM AI, SAS LB to provide consultancy services regarding the underlying hedge fund investments and proposals for allocation. Each of these entities provides research, due diligence results or information regarding a different aspect of the underlying investments and investment managers.

CAAM AI, Inc. provides advice only to three of its affiliates in the CAAM AI Group, and that advice relates only to the Funds. In particular, CAAM AI, Inc. provides advice to CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan, which are investment managers located outside of the United States and are regulated by non-U.S. regulatory bodies having jurisdiction over their activities. CAAM AI, Inc. provides the following services to CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan: (i) identifying the universe of investment funds organized outside the United States managed by managers located in the United States from a group of approximately 5,000 private investment funds and hedge funds; (ii) on a weekly or more frequent basis, recommending for consideration for inclusion in the various funds of funds, a "short list" of approximately 150 funds, including advice tailored to assist CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan in determining for each fund of funds which underlying funds it should invest in as well as the percentage of its assets it should invest in various underlying funds; (iii) conducting due diligence on the managers of such funds; (iv) providing reports on each such manager, including the manager's organization, investment process and risk controls; and (v) providing research on industry trends.⁶ In addition to these activities, CAAM AI, Inc. provides similar advice to CAAM AI Ltd. with respect to the managed account program. With respect to the managed account program, managers are selected for portions of the assets in the managed account program.

As noted above, CAAM AI, Inc. is registered with the CFTC as a CTA and CPO. Nonetheless, the exemption from registration as an investment adviser provided by Section 203(b)(6) for a CTA "whose business does not consist primarily of acting as an investment

⁶ As discussed in Section III of this letter, CAAM AI, Inc. believes that these activities would constitute investment advice as defined in the Advisers Act.

adviser" would appear not to apply. As indicated, it is impossible to conclude that CAAM AI, Inc.'s business does not consist primarily of acting as an investment adviser.

CAAM AI, Inc. provides the information described above to an investment committee for the Funds, which is comprised of CAAM AI, Inc.'s chief executive officer (who also serves as a director of CAAM AI, Ltd. and an executive officer of CAAM AI, SAS), a director of CAAM AI, Inc., and an executive officer of CAAM AI, SAS (who also serves as a director of CAAM AI, Ltd. and as a director of CA AIPG Milan). The investment committee reviews the information provided by CAAM AI, Inc. and makes recommendations to CAAM AI, Ltd., CA AIPG Milan and CAAM AI, SAS. CAAM AI, Ltd., CA AIPG Milan and CAAM AI, SAS typically follow the recommendations of the investment committee. CAAM AI, Ltd., CA AIPG Milan or CAAM AI, SAS make the ultimate decision for a Fund to invest in a particular underlying fund or to hire or fire a particular manager. CAAM AI, Ltd., CA AIPG Milan and CAAM AI, SAS have ultimate decision making authority pursuant to their investment management contracts with the individual Funds and their sub-advisory agreements with CAAM AI, Inc. CAAM AI, Inc. has no direct contractual relationship with the Funds.

As stated above, CAAM AI, Inc. only has three clients of its own (its affiliates, CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan). CAAM AI, Inc. does not communicate with,⁷ or make recommendations to, its affiliates' clients, which are funds of hedge funds, or the investors in those Funds.⁸ In addition, CAAM AI, Inc. has no direct investment advisory relationship with any of its affiliates' clients and its name does not appear in any prospectuses which are currently provided to the investors in the Funds managed by CAAM AI Inc.'s affiliates.⁹ Clients of CAAM AI Group contract directly with CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan and all investment advisory communications with such clients are undertaken exclusively by CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan. Clients are aware that CAAM AI, Inc. is an affiliate of the other entities within CAAM AI Group, but they understand that CAAM AI, Inc. provides investment advisory services only to CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan, and not directly to such clients. Moreover, CAAM AI, Inc. is not responsible for arranging or effecting purchases or sales of interests in the Funds.

⁷ Under very limited circumstances, foreign clients that are visiting the United States may visit the offices of CAAM AI, Inc. and CAAM AI Services. Such clients are accompanied at all times by a representative of CAAM AI SAS. It also is made clear to such clients that CAAM AI, Inc. provides services to CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan, but no services are provided directly to the clients.

⁸ As previously noted, CAAM AI Group has no US clients.

⁹ Promotional materials utilized by CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan may reference the fact that CAAM AI, Inc. is an affiliate of the CAAM AI Group. Those references will make clear that CAAM AI, Inc. only provides advisory services to CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan, and does not render investment advisory services directly to clients.

CAAM AI, SAS LB undertakes research and due diligence activities similar to those provided by CAAM AI, Inc. as described above, except with respect to European and Asian-based private investment funds and hedge funds. It also has only three clients, its affiliates, CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan to which it provides these advisory services.

CAAM AI SAS is in charge of selecting the investment strategies considered appropriate to meet the stated objectives of a Fund. In addition it constructs a proposed global strategic asset allocation at the beginning of each year.

In addition to the advisory services explained above, CAAM AI SAS conducts all marketing and sales activities for the CAAM AI Group. However, no marketing is done in the United States or to US Persons.

CAAM AI Services provides administration, accounting, valuation, information technology, legal and compliance services to CAAM AI Group. In connection with the provision of these services, representatives of CAAM AI Services may communicate directly with clients of the CAAM AI Group, but such communications are of a purely administrative nature. CAAM AI Services does not render any investment advice.

Regulation of the Participating Affiliates

The activities of the foreign entities within the CAAM AI Group are overseen by various regulatory bodies in the jurisdictions where such entities reside.¹⁰ CAAM AI SAS is regulated in France by the AMF as a "société de gestion de portefeuilles," which is the equivalent of an investment adviser in the United States, with permitted activities analogous to those of US investment advisers. CAAM AI SAS is regulated pursuant to the French Monetary and Financial Code, under provisions that are derived from European Union directives (those directives are also applicable to the United Kingdom regulatory regime which oversees the activities of CAAM AI, SAS LB).

Asset management companies in France must be registered with the AMF and must comply with risk management rules, including capital adequacy requirements and risk diversification ratios, and implement internal control rules. The AMF also promulgates regulations applicable to asset management companies in areas such as insider trading and

¹⁰ It should be noted that CAAM AI, Inc.'s activities are limited to providing investment advisory services to and together with affiliates within the CAAM AI Group. Because such affiliates are subject to significant regulation outside the United States, and the managers of the Funds themselves are subject to foreign regulation, we do not believe that foreign clients of the CAAM AI Group have any expectation of protection under the Advisers Act. These clients generally rely on the protection afforded by the laws of foreign jurisdictions. Nor do we believe there is a basis for such clients having any expectation of such protection under the laws of the United States in the future.

market manipulation and has the power to investigate the activities of asset management companies. Other regulations applicable to asset management companies require periodic reporting, such as the reporting of trading of financial instruments to the AMF, as well as the publication of financial statements in accordance with accounting requirements that are specific to the relevant types of entities.

CAAM AI, SAS LB is regulated in the United Kingdom by the FSA, a statutory body established under the Financial Services and Markets Act 2000 to regulate financial services in the United Kingdom and to protect the rights of customers. By law, most financial services firms must be authorized by the FSA to do business in the United Kingdom. Firms, such as CAAM AI, SAS LB, established in another European Economic Area country, may be authorized in the United Kingdom if they are regulated by their own country and have notified the FSA that they want to do business in the United Kingdom. Firms that are authorized must meet and continue to demonstrate set standards in areas such as training and competence, financial stability, personal account dealing, financial promotions and fair customer treatment.

The FSA uses a risk-based approach to monitoring firms. Risks are assessed in terms of their impact and probability. Assessment and ongoing monitoring is coordinated through an FSA relationship manager, who carries out regular visits and risk assessments and determines a risk mitigation program proportionate to the risks identified. The FSA has centralized its supervision of all firms within CA Group in the United Kingdom within a single team in charge of the ongoing relationship between the FSA and CA Group's United Kingdom entities. Notification of material changes and periodic reporting to the FSA is done through the relationship manager.

Where necessary, the FSA has the authority to investigate, discipline or prosecute any firm or individual who violates FSA rules or the provisions of the Financial Services and Markets Act 2000, working with other regulatory bodies and law enforcement in other countries as necessary.

CAAM AI Ltd. is exempt from registration by the Bermuda Monetary Authority but generally is subject to the regulation and supervision by the Minister of Finance of Bermuda pursuant to the provisions of The Companies Act 1981 as from time to time amended. CAAM AI Ltd. must comply with laws and regulations in Bermuda and is subject to sanctions in the event of breaches of such laws and regulations, including liquidation of CAAM AI Ltd. and the imposition of fines against directors and officers. The Minister of Finance may authorize investigations into the affairs of CAAM AI Ltd. and based upon the results of such investigations may require CAAM AI Ltd. to take such measures as the Minister of Finance may impose.

The Bermuda mutual fund companies advised by CAAM AI Ltd. are regulated under the Bermuda Monetary Authority Collective Investment Scheme Regulations 1998. These regulations require the appointment of an investment adviser that has been pre-approved by the

Authority. CAAM AI Ltd. has been formally approved to act as the investment adviser to each of the Bermuda mutual fund companies that it advises.

CA AIPG Milan is regulated in Italy by the Bank of Italy. In connection therewith, CA AIPG Milan is required to make periodic filings with the Bank of Italy, must respond to requests for information and is subject to inspections.

III. Discussion and Analysis

Introduction- Request for No-Action Relief

As discussed below, we believe that acting in good faith in the face of ambiguity, CAAM AI, Inc. would be required to register under the Advisers Act in the absence of the requested relief. We believe that the Staff should grant CAAM AI, Inc. the requested relief and not recommend enforcement action to the SEC if CAAM AI, Inc. does not register under the Advisers Act. We believe that under a conducts and effects¹¹ analysis of potential registration, CAAM AI, Inc. is entitled to the requested relief because it only provides investment advice to three of its foreign affiliates which are themselves regulated by foreign regulatory authorities. We believe, however, that prior Staff guidance effectively requiring a US resident adviser to register under the Advisers Act despite the fact that such adviser only had foreign clients should not be applied to CAAM AI, Inc. We further believe that CAAM AI, Inc. should not be treated as an investment adviser to its affiliates' clients. We conclude by noting that an analysis of the relative burdens imposed on CAAM AI, Inc., if required to register as an investment adviser, justifies the requested relief.

Given the limited nature of the activities performed by CAAM AI, Inc. in the United States and the fact that CAAM AI, Inc. currently does not advise US clients, CAAM AI, Inc. proposes that it be able to undertake the activities described herein with respect to foreign clients¹² 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 acts or omissions of CAAM AI, Inc. involve essentially no conduct or have no material effects in the United States.¹³

¹¹ U.S. Securities and Exchange Commission, Division of Investment Management. *Protecting Investors: A Half Century of Investment Company Regulation*, May 1992, p. 221-236.

¹² CAAM AI, Inc. has three clients, all of which are foreign affiliates. Moreover, CAAM AI Group has all foreign, non-US clients. Nonetheless, as discussed in this Section III, CAAM AI, Inc. should not have to treat the clients of its affiliates as its own clients, because it does not provide advice that is specific to these clients, since only its affiliates have discretion over the assets of these clients, and CAAM AI, Inc., for all intents and purposes, has no contact with these clients.

¹³ CAAM AI, Inc. greatly appreciates and respects the Staff's concern regarding the United States being used as a haven to manufacture fraudulent schemes whose victims are foreign. However, this concern should

Advisers Act Registration Requirement

CAAM AI, Inc. makes the requested relief because it finds itself in an extremely ambiguous regulatory void and in a unique position. As discussed in Section II of this letter, CAAM AI, Inc. provides investment advisory services exclusively to three clients which are foreign affiliates within the CAAM AI Group: CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan. CAAM AI, Inc. believes that these activities constitute investment advice under the Advisers Act. Under Section 202(a)(11) of the Advisers Act, an "investment adviser" is defined as any person who, for compensation, is engaged in the business of providing advice to others or issuing reports or analyses regarding securities.

In *Gim-Seong Seow*, the Staff stated that even if a US resident adviser provides investment advisory services exclusively to foreign clients, it is still required to register under the Advisers Act.¹⁴ Based on the facts, as set forth previously, without the requested relief, CAAM AI, Inc. could be required to register under the Advisers Act, because it is a US resident adviser that provides investment advice on a continuous and regular basis to CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan.

Furthermore, prior Staff positions as well as application of Section 208 of the Advisers Act, raise the question as to whether the Staff would look through CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan and take the position that such affiliates' clients also are those of CAAM AI, Inc. for the purpose of determining the number of CAAM AI, Inc.'s clients.¹⁵

We believe that CAAM AI, Inc. should not be considered to be the adviser of its affiliates' clients. The Staff previously has taken the position that where a sub-adviser provides advice to an investment adviser without consideration of the ultimate clients, only the investment adviser, and not the investment adviser's clients, is deemed to be a client of the sub-adviser.¹⁶ CAAM AI, Inc. only provides CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan with general research findings on offshore funds while CAAM AI Ltd., CAAM AI SAS and CA

not be present in CAAM AI, Inc.'s situation. As described in footnote 10, foreign clients of CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan have no expectation of being protected by the regulation afforded by the United States. Rather, such clients reasonably can be expected to look toward the regulatory protections afforded by the countries in which both they and the regulated CAAM AI Group affiliates are located.

¹⁴ *Gim-Seong Seow*, October 30, 1987.

¹⁵ Footnote 243 of Investment Advisers Act Release No. 2333 (December 2, 2004) provides in part:

"Advisers may not circumvent [registration] by delegating the advisory function to subadvisers, including subadvisers that might not be identified in the fund's offering materials, or by establishing a "manager of managers" structure."

¹⁶ *Copeland Financial Services, Inc.*, September 21, 1992.

AIPG Milan make the ultimate investment decisions on behalf of their clients. CAAM AI, Inc. has no discretion over the management of the affiliates' client assets. Consequently, CAAM AI, Inc. should not be subjected to the Advisers Act because it essentially only has three clients (CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan), all three of which are foreign affiliates and are regulated by their respective regulatory authorities in other countries. If the Staff took the position that it is necessary to count CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan's clients as CAAM AI, Inc.'s own as well, then the total number of clients would be above fourteen¹⁷ (CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan currently have 35 non-US Funds as clients).

Notwithstanding the fact that CAAM AI, Inc. could be required to register under the Advisers Act for the reasons set out above, CAAM AI, Inc. requests assurance that the Staff would not recommend enforcement action by the SEC if CAAM AI, Inc. does not register under the Advisers Act because the requested relief is consistent with the Staff's historical position regarding the limitations on the extraterritorial reach of the Advisers Act¹⁸ and the fact that requiring that CAAM AI, Inc. register as an investment adviser under the Advisers Act would be unduly burdensome without a proportionate or commensurate regulatory benefit to any clients, whether US or foreign.

Regulation Across Territorial Borders

In numerous no-action letters,¹⁹ the Staff has set forth its policy regarding the application of the Advisers Act across territorial borders or when foreign clients are involved. In one such letter, *The National Mutual Group*, the Staff found that the following factors warranted a limitation of the Advisers Act as applied to an adviser of foreign clients: (i) the lack of US public policy interests served by applying the Advisers Act to wholly or predominantly foreign relationships and transactions; (ii) the significant regulatory burdens that would be imposed on the regulated entity; (iii) principles of international comity and greater interests of foreign governments in regulating those who conduct business from within their countries with their citizens and residents; (iv) the absence of any expectations by foreign clients that the provisions of the Advisers Act apply to their relationships with the registered entity; (v) the adverse effects that extraterritorial application of the Advisers Act would have on foreign competition and commerce; (vi) the fact that the conditions imposed by the Staff in granting relief address and

¹⁷ Section 203(b)(3) of the Advisers Act.

¹⁸ U.S. Securities and Exchange Commission, Division of Investment Management. *Protecting Investors: A Half Century of Investment Company Regulation*, May 1992, p. 221-236.

¹⁹ *Royal Bank of Canada*, June 3, 1998; *ABN AMRO Bank, N.V.*, July 1, 1997; *Murray Johnstone Holdings Ltd.*, October 7, 1994; *Mercury Asset Management, plc.*, April 16, 1993; *The National Mutual Group*, March 8, 1993; *Uniao de Bancos de Brasileiros S.A.*, July 28, 1992; *Richard Ellis*, September 17, 1981.

provide reasonable assurances for the satisfaction of regulatory concerns arising under the Advisers Act in respect of such foreign dealings.²⁰

An analysis of the *The National Mutual Group* factors weighs in favor of granting CAAM AI, Inc. the requested relief. The most critical factor is that foreign clients have no expectation that the provisions of the Advisers Act apply to their relationship with the CAAM AI Group. CAAM AI, Inc.'s activities are limited to providing advisory services to advisory affiliates within the CAAM AI Group, and it has no direct investment advisory relationship with its affiliates' clients. These clients contract with and consider themselves to be clients of the CAAM AI Group or, more specifically of the advisory affiliates with whom they have investment management agreements, not clients of CAAM AI, Inc. Because the other entities within the CAAM AI Group are subject to oversight by applicable foreign regulators, these clients expect protection under these regulatory schemes, not the Advisers Act.

Furthermore, this situation also merits relief because the United States would not have a significant regulatory interest in CAAM AI, Inc.'s activities involving foreign clients. The activities CAAM AI, Inc. undertakes in the United States are extremely limited and involve no US clients. This should be contrasted with previous letters that dealt with advisers who provided advice directly to US clients. CAAM AI, Inc.'s activities generally only involve direct contact with its direct clients, which are foreign affiliates. As a result, the United States does not have a significant regulatory interest in requiring that CAAM AI, Inc. register under the Advisers Act.

Moreover, the regulators of other countries that regulate the investment advice provided by the other entities within the CAAM AI Group have a much greater interest than the United States in regulating the investment advice because the foreign clients expect that such regulators are monitoring the activities of the CAAM AI Group entities. As stated previously, those clients do not expect protection under the Advisers Act.

Lastly, we believe that requiring that CAAM AI, Inc. register as an investment adviser under the Advisers Act would be unduly burdensome without a proportionate or commensurate regulatory benefit to any clients, whether US or foreign. Advisers Act Rules 204A-1 and 206(4)-7 significantly increase the rigorous regulation of registered investment advisers. However, CAAM AI, Inc. already is regulated by the CFTC and CAAM AI, Inc.'s affiliates are already regulated heavily by foreign governments. Requiring that CAAM AI, Inc. register such that it is subject to further regulation under the Advisers Act would be duplicative and burdensome with very little, if any, regulatory benefit.

²⁰ *The National Mutual Group* at 26969.

Registration of US Resident Adviser with Only Foreign Clients

Similarly, we do not believe that the Staff's finding in *Gim-Seong Seow* should be applied to the present situation because the concerns expressed in that letter are either answered or are not present in CAAM AI, Inc.'s circumstances. In *Gim-Seong Seow*, the Staff had to determine whether a US resident investment adviser providing services exclusively to foreign clients was required to register under the Advisers Act if the adviser used the foreign clients' funds to invest in the securities of US issuers. The Staff determined that such an adviser would be required to register under the Advisers Act and provided four policy reasons for its position. First, the Staff stated that 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, the Staff believed that it is reasonable for foreigners to expect that a person doing business in the United States will be subject to United States laws. Third, the Staff reasoned that 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 US clients. Finally, the Staff stated that, 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, registration of resident advisers who give advice only to foreigners seems warranted.

An analysis of these policy reasons as applied to CAAM AI, Inc. shows that an unregistered CAAM AI, Inc. does not create the problems that those policy reasons address. As stated previously, CAAM AI, Inc. only provides investment advice to its affiliates and does not deal directly with any of its affiliates' clients. These clients contract with and consider themselves to be clients of the CAAM AI Group, not clients of CAAM AI, Inc. Accordingly, they do not expect protection under the Advisers Act but rather of the regulators of the managers, whom they appointed as investment managers and with whom they have a management agreement. Similarly, because the other entities of the CAAM AI Group that deal directly with such clients are regulated by foreign regulatory authorities, the concern that fraud may be manufactured within the United States and exported to the foreign clients is greatly reduced, if not eliminated. Likewise, given the limited activities of CAAM AI, Inc., CAAM AI, Inc. does not provide itself nor any member of CAAM AI Group with any competitive advantage that arises out of CAAM AI, Inc.'s unregistered status.

Most importantly, the case at hand can be distinguished from *Gim-Seong Seow*. *Gim-Seong Seow* provided the United States with a greater regulatory interest than does CAAM AI, Inc. because *Gim-Seong Seow* dealt with a US resident investment adviser that provided investment advice directly to foreign clients with absolutely no regulation of such activities if the investment adviser did not register under the Advisers Act. CAAM AI, Inc., on the other hand, only provides advice to its foreign affiliates, which are themselves regulated by the countries in

which they reside. Accordingly, unlike the situation in *Gim-Seong Seow*, there would be no absence of governmental regulation in CAAM AI, Inc.'s situation.

Furthermore, while unclear from the facts set forth in *Gim-Seong Seow*, it can be inferred that the adviser in *Gim-Seong Seow* had more than fourteen foreign clients and/or held itself out as an adviser, whereas CAAM AI, Inc. only has three direct clients: CAAM AI Ltd., CAAM AI SAS and CA AIPG Milan.

IV. Representations and Undertakings

Based upon the analysis set forth above, we believe that our request for no-action relief is consistent with the SEC's historical position regarding the limitations on the extraterritorial reach of the Advisers Act.²¹ In connection with such request, CAAM AI, Inc. hereby makes certain representations and warranties on behalf of itself and the Participating Affiliates (the "Undertakings"):

1. CAAM AI, Inc. will only render investment advice to Participating Affiliates that provide investment advisory services that are subject to the regulatory regimes of other countries.
2. Based on their advisory activities, the Participating Affiliates, if viewed independently, would not be required to register under the Advisers Act.
3. If CAAM AI, Inc. provides investment advice to a Participating Affiliate which itself would be required to register under the Advisers Act, CAAM AI, Inc. will register under the Advisers Act and comply in all respects with all the requirements of the Advisers Act.

V. Conclusion

Given the Staff's historical position on the extraterritorial reach of the Advisers Act, the limited nature of the activities performed by CAAM AI, Inc. in the United States, and the fact that CAAM AI, Inc. only advises affiliated non-US clients which are foreign-regulated entities, CAAM AI, Inc. believes that the requested relief would provide equitable relief from the potentially redundant regulatory burdens to which CAAM AI, Inc. otherwise would be subject to without any detrimental affect on any clients or US regulatory interests.

²¹ U.S. Securities and Exchange Commission, Division of Investment Management. *Protecting Investors: A Half Century of Investment Company Regulation*, May 1992, p. 221-236.

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For the reasons set forth above, we request assurances that the Staff would not recommend enforcement action to the SEC if CAAM AI, Inc. undertakes the activities described herein without registering under the Adviser's Act.²²

If you have any questions or seek additional information regarding this request, please contact the undersigned at 312-558-5804.

Sincerely,



Wesley G. Nissen

²² While this letter addresses the issue of whether CAAM AI, Inc. is required to register under the Advisers Act, it goes without saying that if CAAM AI, Inc. is granted the requested relief, none of the Participating Affiliates would be required to register under the Advisers Act based on the facts and Undertakings described herein.