

KING & SPALDING

2500 TRUST COMPANY TOWER
ATLANTA, GEORGIA 30303
404/572-4600

1800 M STREET, N. W.
WASHINGTON, D. C. 20036
202/466-7640

March 18, 1981

Act	IAA-40
Section	208(d)
Title	
Public Availability	9/17/81

Mr. Gerard Hughes
Securities and Exchange Commission
Division of Investment Management
Office of Chief Counsel
500 N. Capitol Street
Washington, DC 20549

Re: Richard Ellis, Inc.

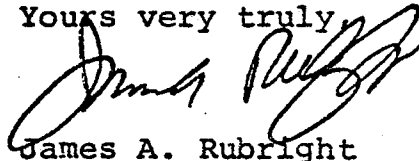
Dear Mr. Hughes:

In accordance with our earlier conversation regarding Richard Ellis, Inc., we enclose an original and three copies of a request that the staff of the Securities and Exchange Commission take a no action position with respect to the matters described in the enclosed letter. An additional copy has been enclosed which is marked to indicate all material changes from the draft of the letter previously submitted.

If you have any questions or require further information, please contact the undersigned or Scott J. Arnold of this firm.

Thank you very much.

Yours very truly,



James A. Rubright

JAR/jt
Enclosures

cc: Mr. Scott J. Arnold
Mr. Bradley A. Olsen
Mr. Donald H. Bodel

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March 19, 1981

Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Attention: Office of Chief Counsel
Division of Investment Management

Investment Advisers Act of 1940 - Sections 203
and 208(d)

Re: Richard Ellis

Gentlemen:

This is to request your confirmation that the Staff of the Division of Investment Management will not recommend that the Securities and Exchange Commission take any enforcement action against Richard Ellis, a partnership organized under the laws of the United Kingdom ("Richard Ellis"), or R. E. Holdings Limited, a Delaware corporation the stock of which is held primarily by the partners of Richard Ellis ("Holdings"), if Richard Ellis, Inc., a Delaware corporation the stock of which is held by Holdings, conducts the activities described below and if Richard Ellis and Holdings do not register under the Investment Advisers Act of 1940 (the "Act").

Background and Business Activities of Richard Ellis and REI

Richard Ellis provides comprehensive commercial and industrial real estate services primarily in the United Kingdom, Europe, North America, South Africa and Asia. Richard Ellis is currently composed of nineteen voting partners. The firm is centrally managed through a Senior Partner, the members of the Management Committee and the members of the Executive Committee (collectively, the "Management Positions").

Holdings was organized in 1976 as a holding company for subsidiaries formed to provide real estate services in North America. Prior to October 1, 1980, Holdings had three wholly owned subsidiaries, Richard Ellis (Midwest), Inc., Richard Ellis

(Southeast), Inc. and Richard Ellis (Western), Inc. (collectively, the "U.S. Subsidiaries"). Effective October 1, 1980 Richard Ellis caused Richard Ellis (Southeast), Inc. and Richard Ellis (Western), Inc. to be merged with Richard Ellis (Midwest), Inc. which was renamed Richard Ellis, Inc. ("REI"). All references herein to activities of REI prior to the effective date of the merger refer to the U.S. Subsidiaries. Holdings does not conduct any business activities other than acting as a holding company, although it may acquire or organize other subsidiaries that may engage in other businesses, and it is not contemplated that Holdings will ever act other than as a holding company.

REI presently provides real estate investment services, including research and advice regarding United States real estate investments and project development and management services, directly to clients of Richard Ellis located outside of the United States and their United States subsidiaries, and REI is compensated directly by these clients. REI's relationships with Richard Ellis' foreign clients have been maintained primarily through Christopher D. Budden, a Vice President and Director of Holdings and of REI and an investment partner of Richard Ellis in its London office. Mr. Budden does not hold any Management Position with Richard Ellis and does not possess the power to exercise a controlling influence over the management or policies of Richard Ellis.

Proposed Activities and Organizational Structure

REI has begun to offer its real estate advisory services to institutional clients (primarily pension trusts) located in the United States and believes that the investment policies and objectives of these clients will make it desirable for REI to give advice to such clients with respect to real estate investments that may involve securities within the meaning of the Act. Therefore, prior to rendering advice with respect to real estate securities, REI intends to register under the Act.

In addition to advising such domestic clients, REI may provide advice to Richard Ellis' foreign clients or to their U.S. subsidiaries with respect to real estate investments that may involve securities, and REI will be compensated directly by these clients. REI also may render advice to Richard Ellis with respect to real estate investments that may involve securities, and will be compensated directly by Richard Ellis in such instances. If REI renders advice with respect to real estate investments that may involve securities to Richard Ellis, Richard Ellis will independently evaluate such advice and will retain and exercise discretion with respect to whether such advice is provided to clients of Richard Ellis.

The Board of Directors of Holdings consists of Messrs. Andrew J. M. Huntley, D. A. Sizer, Christopher D. Budden and Donald H. Bodel, and these same individuals serve on the Board of Directors of REI. Mr. Bodel is President of Holdings and of REI and owns common stock of Holding representing less than 5% of Holdings' outstanding shares. Mr. Budden is Vice President-Secretary of Holdings and of REI. Messrs. Huntley, Sizer and Budden are partners of Richard Ellis in London. Mr. Bodel is not a partner, director, officer or employee of Richard Ellis or any affiliated person of Richard Ellis other than Holdings and REI. In connection with the merger referred to above, three additional persons, all of whom are employees of REI but none of whom is a partner, director, officer or employee of Richard Ellis or any other affiliated person of Richard Ellis, were added to the Board of Directors of REI. Accordingly, a majority of the directors of REI is composed of persons who are not directors, officers, employees or partners of Richard Ellis or any affiliated person of Richard Ellis (except REI and in the case of Mr. Bodel, Holdings) (collectively the "Unaffiliated Directors") and all compensation paid to the Unaffiliated Directors for their services to REI will be paid by REI.

The Unaffiliated Directors of REI have determined that the capital, independent of controlling persons and affiliates of controlling persons, of REI is sufficient to provide it with financial responsibility for the conduct of its advisory business, including provisions for the means and facilities to carry out its advisory responsibilities for its clients, as well as provisions for meeting all of its liabilities. Richard Ellis will enter into an agreement with REI subordinating to the claims of others all liabilities of REI to Richard Ellis and to any affiliated person controlled by Richard Ellis.

With the exceptions of Mr. Budden, whose relationships are discussed below, and the relationships of Mr. Bodell to Holdings, none of the officers, employees or advisory representatives employed by REI is a partner, director, officer or employee of Richard Ellis or any affiliated person of Richard Ellis, and all compensation to all officers, employees and advisory representatives of REI is paid by REI. However, a number of employees of REI are former employees of Richard Ellis, and it is contemplated that from time to time employees of Richard Ellis may terminate their employment and become employed by REI and employees of REI may terminate their employment and become employees of Richard Ellis. At or about the time of registration of REI under the Act Mr. Budden will move his residence to the United States and will become a full-time employee of REI. Mr. Budden will receive a salary and profit share interest from REI that will compensate him for all his services to REI. Mr. Budden will continue to be a partner of Richard Ellis and to share in the profits and losses of Richard Ellis in accordance with his interest therein. However, Mr. Budden's annual partner-

ship earnings will be reduced by his compensation from REI and in the event his partnership earnings are less than the amount received from REI, he will be required to contribute the difference to Richard Ellis.

Recommendations and decisions regarding investments by clients of REI in investments that may involve a security within the meaning of the Act will be made without consultation with any partner, officer, director or employee of Richard Ellis or any affiliated person of Richard Ellis, except to the extent that Mr. Budden may be deemed to be an affiliated person of Richard Ellis. REI will be solely responsible for the conduct of its investment advisory businesses, including the development of its own investment views and rendering of independent investment advice regarding investments in real estate that may involve securities. The staff of REI will have the capability and responsibility for conducting its own investment research and for locating investment opportunities and will base its advice upon the information so developed as well as upon its knowledge of its clients' individual needs and information.

REI will receive information and advice that may affect its investment advisory businesses from Messrs. Huntley and Sizer and others at Richard Ellis with respect to statistical and factual matters and general economic and investment trends in various world markets. Such persons will not furnish advice or recommendations regarding investments that involve a security.

The offices of REI are located in the United States and are separate and apart from the offices of Richard Ellis. Representatives of Richard Ellis will, from time to time, visit the United States and meet in and make use of facilities of REI in the United States. REI will be responsible for complying with recordkeeping requirements to which it will be subject, for maintaining its properties and assets and for compensating its employees.

Conclusion

We are of the view that the proposed activities of REI and its relationships with Richard Ellis and Holdings do not require Richard Ellis or Holdings to register under the Act by reason of the applicability of Section 208(d) of the Act. The Commission has stated in Investment Advisers Act Release No. 353 (December 18, 1972) that Section 208(d) is intended to require registration where

all or substantially all of the duties and functions related to the rendering of investment advice undertaken to be performed by a

registered investment adviser are in fact performed by the person controlling the registered adviser or an affiliate of such controlling person, or key advisory personnel of the registered investment adviser are also personnel of the controlling person or affiliate of such controlling person.

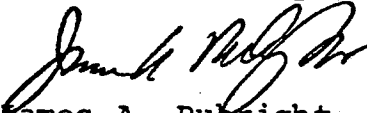
As described above, the operations of REI will be conducted independently by REI personnel, without assistance from Richard Ellis or any of its affiliates (except to the extent that Mr. Budden, who will continue as a partner of Richard Ellis, may be deemed to be an affiliated person of Richard Ellis, and ignoring Mr. Bodel and Mr. Budden's relationships with Holdings, which is not an operating company). Accordingly, in no event will Richard Ellis or Holdings, or any affiliated person of Richard Ellis or Holdings (except as noted) do indirectly any act that it would be unlawful under the Act for such persons to do directly. Therefore, neither Richard Ellis nor Holdings would be required to register under the Act if they engaged in the activities described herein.

We believe that our conclusions are supported by formerly proposed Rule 202-2 and by a series of no-action letters involving similar relationships. See Morgan Grenfell Investment Services, Limited (available April 13, 1977), BA Investment Management Corp. (available April 27, 1978), Robert Fleming Investment Management Limited (available May 4, 1979), and Reliance Group Inc. (available December 14, 1979). Although the relationship of Mr. Budden may be deemed to be inconsistent with the terms of formerly proposed Rule 202-2 because he may be deemed to be an affiliated person of Richard Ellis within the meaning of Section 2(a)(3) of the Investment Company Act of 1940 (which definition is incorporated into the Act in Section 202(a)(12)), we believe that it is significant that Mr. Budden will be a full-time employee of REI, will not serve as an employee of Richard Ellis, and will not serve in a Management Position or otherwise exercise a controlling influence over the management or policies of Richard Ellis. Accordingly, Mr. Budden will not exercise control over Richard Ellis within the meaning of Section 202(a)(12) of the Act. Further, to the extent that Mr. Budden and Mr. Bodel's relationships with Holdings may result in the proposed relationship between Holdings and REI being deemed to be inconsistent with formerly proposed Rule 202-2, we believe that because Holdings conducts no active business and serves the sole purpose of holding the stock of REI and any other subsidiaries that may be formed in the future (for other than investment advisory purposes), no purpose would be served in requiring the registration of Holdings under the Act.

Based upon the foregoing, we request your confirmation that the staff of the Division of Investment Management will not recommend that the Commission take any enforcement action under the Act against Richard Ellis or Holdings if REI engages in the activities proposed above.

If you require additional information or have any questions in connection with this request, please telephone the undersigned or Scott J. Arnold of this firm.

Yours very truly,


James A. Rubright

JAR:sk

PUBLIC

F.B. AUG 1981

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 80-401-CC
Richard Ellis
R. E. Holdings Limited
File No., 132-3.

Section 202(a)(11) of the Investment Advisers Act of 1940 ("Act") defines an investment adviser to mean, in general,

any person who, for compensation, engages in the business of advising others either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

Section 203(a) of the Act makes it unlawful for any investment adviser, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

Thus, an unregistered foreign company engaged in investment advisory business which does not make use of jurisdictional means in connection with its investment advisory business is not in violation of section 203(a) of the Act.

The foreign entity may create a subsidiary entity to make use of jurisdictional means in connection with the investment advisory business of the subsidiary with the intention that the subsidiary, but not the parent, be registered under the Act.

Section 208(d) of the Act makes it unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

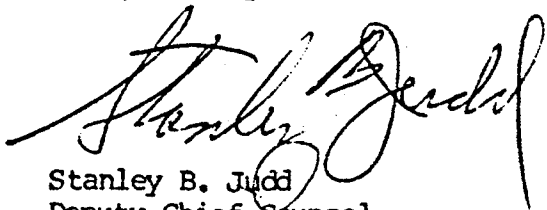
The question that is presented therefore, when an unregistered foreign company creates a registered subsidiary to provide investment advice to United States persons, is whether the parent company is doing indirectly through the subsidiary what it could not do directly without registering under the Act. If it is, it would be in violation of section 208(d) of the Act.

If the subsidiary has an existence independent of the parent and functions independently of the parent, the mere fact of creation and continued ownership by the parent would not constitute a violation of section 208(d).

A subsidiary entity may be regarded as having a separate, independent existence and to be functioning independently of its parent if it (1) is adequately capitalized, (2) has a buffer, such as a board of directors a majority of whose members are independent of the parent, between the subsidiary's personnel and the parent, (3) has employees, officers, and directors, who if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent, (4) itself makes the decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and has and uses sources of investment information not limited to its parent, and (5) keeps its investment advice confidential until communicated to its clients. Cf. Investment Advisers Act of 1940 Release No. 353, December 18, 1972.

Richard Ellis ("Ellis") is a United Kingdom partnership which provides "comprehensive commercial and industrial real estate services." R.E. Holdings Limited ("Holdings") is a Delaware Corporation which is held primarily by the partners of Ellis. It wholly-owns Richard Ellis, Inc. ("REI"), a company which intends to offer institutional clients located in the United States advice with respect to real estate investments that may involve securities and, therefore, intends to register under the Act.

Based on the facts and representations contained in your letter, we would not recommend enforcement action to the Commission if Ellis, Holdings, and REI proceed as described without Ellis or Holdings registering under the Act in reliance upon your opinion as counsel that they are not indirectly doing through REI what they could not do directly without registering under the Act.



Stanley B. Judd
Deputy Chief Counsel

Hughes/jlw

cc: ARO(under §202(a)(11))