ACT ICA
SECTION 15(a); 2(a)(42)
RULE
PUBLIC AVAILABILITY 2/11/00

February 11, 2000
Our Ref. No. 00-74
The R.O.C. Taiwan Fund
File No. 811-4893

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter dated Fenruary 9, 2000 requests our assurance that we would not recommend enforcement action to the Commission under Section 15(a) of the Investment Company Act of 1940 (the "Investment Company Act") against International Investment Trust Company Limited (the "Adviser"), the investment adviser to The R.O.C. Taiwan Fund (the "Trust"), if the Adviser acts as investment adviser of the Trust under an investment contract among the Adviser, the Trust, and Central Trust of China (the "Custodian"), the Trust's custodian, after the implementation of a permanent reduction in the amount of compensation paid under the contract to the Adviser, the Custodian, or both of them, without seeking and obtaining shareholder approval.

Facts

The Trust is a diversified, closed-end investment company that is registered under the Investment Company Act, and its shares are listed on the New York Stock Exchange (the "NYSE"). The Adviser is a securities investment trust enterprise incorporated under the laws of the Republic of China (the "R.O.C.") and registered under the Investment Advisers Act of 1940. The Custodian is a bank organized under R.O.C. law.

You state that the Trust compensates the Adviser and the Custodian pursuant to an investment contract (the "Investment Contract") among the Trust, the Adviser, and the Custodian. You state that the Adviser manages the assets of the Trust that are held in the R.O.C. pursuant to the Investment Contract.[1] You state that, unlike the practice in the United States, the Custodian is a party to the Investment Contract because of R.O.C. legal requirements concerning investment advisory and management arrangements in the R.O.C.

You state that the fees payable by the Trust to the Adviser and the Custodian pursuant to the Investment Contract have been reduced twice, in 1991 and 1996, in each case after the Trust

[1] The Adviser has the authority to manage the small portion of the Trust's assets that may be held periodically by the Trust in the United States pursuant to a separate investment contract between the Trust and the Adviser, to which the Custodian is not a party (the "U.S. Investment Contract"). The Trust pays no additional compensation to the Adviser, and incurs no additional expenses, as a result of the services provided by the Adviser under the U.S. Investment Contract.

obtained shareholder approval of the necessary amendments to the Investment Contract. The Adviser, the Custodian, and the trustees of the Trust (the "Trustees") have discussed the possibility of a further fee reduction, but have not yet reached an agreement. If a fee reduction is agreed upon, the Investment Contract and the obligations of the Adviser and the Custodian thereunder would otherwise remain the same, and there would be no decrease or modification in the nature or level of services provided by the Adviser or the Custodian.

You represent that the Investment Contract will be amended in accordance with the provisions of Section 15 of the Investment Company Act, other than the shareholder approval requirement, to reflect the fee reduction. In particular, you represent that if a fee reduction is agreed upon, the Trust will obtain approval of the fee reduction from the Trustees, including a majority of the independent Trustees, and that the Investment Contract will be amended to precisely describe the new fee. You further represent that the Trust will notify its shareholders of the fee reduction by delivery of a letter mailed with the next financial report that is required to be provided to shareholders after the reduction (i.e., a quarterly, semi-annual, or annual report to shareholders). You also represent that, upon its effectiveness, the proposed fee reduction would be a permanent amendment to the Investment Contract. Finally, you represent that shareholders would approve any material future amendments to the Investment Contract, including any amendment reinstating the existing fee schedule, or any decrease or modification in the nature or level of the services provided by the Adviser or the Custodian.[2]

Analysis

Section 15(a) of the Investment Company Act provides, in part, that it is unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities[3] of the registered investment company and precisely describes all of the compensation to be paid under the contract. Any material modification of an advisory contract, such as changing the amount of the compensation paid under the contract, generally would require shareholder approval as described in Section 15(a).[4]

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2 We note that any future amendment that reduces the fee(s) paid under the Investment Contract consistent with the representations made in this letter could be implemented without seeking and obtaining shareholder approval.

3 Section 2(a)(42) of the Investment Company Act defines a vote of a majority of the outstanding voting securities as the lesser of: (a) 67 percent or more of the voting securities present at the shareholder meeting, if the holders of more than 50 percent of the outstanding voting securities of such company are present or represented by proxy; or (b) more than 50 percent of the outstanding voting securities of such company (a "Majority Shareholder Vote").

4 We recognize that if the Investment Contract had been structured instead as two separate contracts -- a custodial agreement and an advisory agreement -- it would not be necessary to

(footnote continued)

The staff previously has indicated that it would not recommend enforcement action to the Commission under Section 15(a) of the Investment Company Act if an open-end fund that is not required to hold annual shareholder meetings amends its investment advisory agreement permanently to reduce the compensation paid to the investment adviser without seeking and obtaining shareholder approval, subject to certain representations.[5] You believe that the staff has not considered whether a closed-end fund that is required to conduct annual shareholder meetings should be permitted to amend its investment advisory agreement permanently to reduce the fees payable under the agreement without seeking and obtaining shareholder approval.

Although the Trust is required to conduct an annual meeting of shareholders,[6] you assert that the submission of a proposal to approve a reduced fee by a Majority Shareholder Vote would increase the costs related to preparing and mailing the proxy statement and solicitation of the Trust's shareholders with no apparent benefit to shareholders.[7] In addition, you note our position that "a majority of an investment company's outstanding voting securities always would approve

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obtain shareholder approval to amend the custodial agreement to reduce the fees paid to the Custodian. This argument alone, however, does not support the conclusion that a shareholder vote is not required to reduce the fees paid to the Custodian. See Franklin Templeton Group of Funds, SEC No-Action Letter (pub. avail. July 23, 1997); American Odyssey Funds, Inc. SEC No-Action Letter (pub. avail. Oct. 7, 1996).

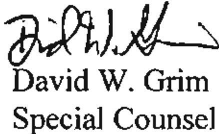
[5] See, e.g., Washington Mutual Investors Fund, Inc., SEC No-Action Letter (pub. avail. May 14, 1993); Limited Term Municipal Fund, Inc., SEC No-Action Letter (pub. avail. Nov. 17, 1992).

[6] You state that the rules of the NYSE require the Trust to hold an annual shareholder meeting to elect Trustees, and require a quorum to be present at the shareholder meeting to permit action to be taken on any vote at that meeting. See New York Stock Exchange Listed Company Manual, Paragraphs 302 and 310.

[7] You state that the Trust's bylaws currently define a quorum to be one-third of the Trust's issued and outstanding shares, which is less than that required to secure a Majority Shareholder Vote as defined in Section 2(a)(42) of the Investment Company Act. See supra note 3. In addition, you anticipate that a shareholder vote will not be required in the foreseeable future on any matter that is supported by the Trustees and that would require a Majority Shareholder Vote for its approval. You therefore assert that a requirement to obtain approval of the proposed amended Investment Contract by a Majority Shareholder Vote would impose unjustifiable additional proxy solicitation expenses on the Trust. You state that such costs could become particularly significant if, for example, the proposal to shareholders was made and the quorum required by Section 2(a)(42) of the Investment Company Act was not achieved, resulting in the need to adjourn the meeting in order to engage in further solicitation to obtain this quorum.

a proposed advisory contract amendment that had no effect other than to reduce the percentage of the company's assets to be paid to the adviser."[8]

Based on the facts and representations in your letter, particularly your representations that (a) the permanent amendment of the Investment Contract will not decrease or modify the nature or level of services that the Adviser and the Custodian provide to the Trust, and (b) the Investment Contract will be amended to reflect the fee reduction in accordance with the provisions of Section 15 of the Investment Company Act, other than the shareholder approval requirement, we would not recommend enforcement action to the Commission under Section 15(a) of the Investment Company Act against the Adviser if the Adviser acts as investment adviser of the Trust under the Investment Contract after the implementation of a reduction in the amount of compensation paid under the Investment Contract to the Adviser, the Custodian, or both of them, without seeking or obtaining shareholder approval. This response expresses the staff's position on enforcement action only and does not express any legal conclusions on the issue presented. Any different facts or circumstances may require a different conclusion.



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[8] Limited Term Municipal Fund, Inc., supra note 5.

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February 9, 2000

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Chief Counsel
Division of Investment Management
Securities and Exchange Commission
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Investment Company Act/15(a)(1)

The R.O.C. Taiwan Fund

Dear Mr. Scheidt:

We are counsel to The R.O.C. Taiwan Fund (the "Trust"), a diversified, closed-end management investment company registered under the Investment Company Act of 1940 (the "Investment Company Act") whose shares are listed on the New York Stock Exchange (the "NYSE"), and its manager, International Investment Trust Company Limited (the "Adviser"), a "securities investment trust enterprise" incorporated under the laws of the Republic of China (the "R.O.C.") and registered as an investment adviser under the Investment Advisers Act of 1940. On behalf of the Trust and the Adviser we request assurance that the Staff of the Division of Investment Management (the "Staff") would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under Section 15(a) of the Investment Company Act against the Adviser if the Adviser acts as investment adviser of the Trust under an investment contract among the Adviser, the Trust and Central Trust of China, the Trust's custodian (the "Custodian"), after the implementation of a permanent reduction in the amount of the compensation paid under the contract to the Adviser, the Custodian, or both of them, without seeking and obtaining shareholder approval.[1/]

1/ Because of requirements imposed by R.O.C. law with respect to investment advisory and management arrangements in the R.O.C. (and contrary to practice in the United States), the Adviser manages the Trust's assets in the R.O.C. pursuant to an investment contract (the "Investment Contract") among
(continued...)

Background

The Trust is a Massachusetts business trust formed in 1988 in connection with the reorganization (the "Reorganization") on May 19, 1989 of The Taiwan (R.O.C.) Fund (the "Fund"), a securities investment trust fund organized in 1983 under the laws of the R.O.C., into the Trust.

All compensation paid to the Adviser and the Custodian in respect of their services to the Trust is paid in New Taiwan dollars (NT$) monthly in arrears pursuant to the Investment Contract, at the following rates (the "Current Fee Schedule"): The Adviser receives a fee of (a) 1.40% of the net asset value ("NAV") of the assets of the Trust held in the R.O.C. up to NT$6 billion (approximately US$196 million),[2] (b) 1.20% of such NAV with respect to such Trust assets in excess of NT$6 billion up to NT$9 billion (approximately US$294 million), (c) 1.00% of such NAV with respect to such Trust assets in excess of NT$9 billion up to NT$12 billion (approximately US$392 million) and (d) .80% of such NAV with respect to such Trust assets in excess of NT$12 billion. The Custodian receives a fee in NT$ at the rate of (a) 0.16% of such NAV with respect to such Trust assets up to NT$6 billion (US$196 million), (b) 0.14% of such NAV with respect to such Trust assets in excess of NT$6 billion up to NT$9 billion (US$294 million), (c) 0.12% of such NAV with respect to such Trust assets in excess of NT$9 billion up to NT$12 billion (US$392 million) and (d) 0.10% of such NAV with respect to such Trust assets in excess of NT$12 billion.

The fees payable by the Trust to the Adviser and the Custodian have been reduced twice since the Reorganization, in 1991 and 1996, in each case after obtaining the requisite shareholder vote as required under the Investment Company Act. The Adviser, the Custodian and the Trustees of the Trust (the "Trustees") have

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[1] (...continued)
the Trust, and Adviser and the Custodian. The Custodian is a bank organized under R.O.C. law. Pursuant to a separate investment contract between the Trust and the Adviser (to which the Custodian is not a party) (the "U.S. Investment Contract"), the Adviser also has the authority to manage the small proportion of the Trust's assets that may periodically by held by the Trust in the United States. The Trust pays no additional compensation to the Adviser, and incurs no additional expenses, as a result of the services provided by the Adviser under the U.S. Investment Contract.

[2] The U.S. Dollar figures in parenthesis are based on an exchange rate of US$1.00=NT$30.65, which was the certified noon buying rate in New York for cable transfers, as made available by the Federal Reserve, on February 9, 2000.

discussed the possibility of, but not yet agreed to, a further fee reduction. If such a fee reduction were effected, it is anticipated that the Investment Contract and the obligations of the Adviser and the Custodian thereunder would otherwise remain the same. There would be no decrease or modification in the nature or level of services provided by the Adviser or the Custodian.

Sections 15(a)(2) and 15(c) of the Investment Company Act provide, in combination, that, after an initial two-year term, the Investment Contract may continue in effect from year to year if its continuance is approved at least annually by the vote of a majority of the trustees of the Trust who are not "interested persons" (as defined in the Investment Company Act) of the Adviser ("Independent Trustees"), cast in person at a meeting called for that purpose, and by either (a) the Trust's Board of Trustees as a whole or (b) the Trust's shareholders, acting by the vote of a majority of the Trust's outstanding voting securities (as defined in the Investment Company Act, a "Majority Shareholder Vote"). Under the Investment Company Act a Majority Shareholder Vote is defined (as a component of the definition of "voting securities" in Section 2(a)(42)) as the affirmative vote of the lesser of (i) more than 50% of the outstanding voting securities and (ii) 67% of the voting securities present at the meeting, provided that the holders of more than 50% of the outstanding voting securities are present or represented by proxy at the meeting. If the Investment Contract were amended in any material respect, under Section 15(a) of the Investment Company Act it would be considered a new contract requiring the approval by (a) a majority of the Independent Trustees and (b) a Majority Shareholder Vote.

We believe that a change in the compensation payable pursuant to the Investment Contract would generally constitute a material change in it and would, in any event, cause the Investment Contract, as previously approved by the Trust's shareholders, no longer to contain the "precise description" of the compensation paid pursuant thereto that is required by Section 15(a)(1) of the Investment Company Act. We believe, however, that a fee reduction that was not accompanied by any decrease or modification in the Adviser's and the Custodian's obligations to the Trust would obtain the approval of the Trust's shareholders as a matter of course (so long as a quorum could be obtained for such a vote).

As noted above, as a result of the Investment Company Act's definitions, a quorum constituting a majority of the Trust's outstanding shares would be required in order for the Trust to obtain a Majority Shareholder Vote. Because obtaining that level of quorum has with some frequency proved to be difficult, in 1994 the Trustees of the Trust amended the Trust's Bylaws (after obtaining permission from the NYSE to do so) to reduce the required quorum for a

shareholders' meeting to one-third from one-half of the Trust's issued and outstanding shares.[3/]

In addition, under Rules 450 and 452 of the NYSE, brokers who hold the Trust's shares in "street name" accounts are required to obtain instructions from the shares' ultimate beneficial owners in order to vote those shares concerning the approval of a new or amended Investment Contract (regardless of whether those shares are otherwise deemed present for purposes of routine matters, such as the uncontested election of Trustees and the approval of the Trust's accountants, concerning which a broker-dealer can vote without receiving its customers' instructions); and, separately, banks that hold shares in street name for the account of customers may be contractually required to vote on such matters only pursuant to customer instruction (or in any event may require customer instruction to vote on such matters as a matter of practice). These requirements impose additional difficulties in obtaining the required proportion of favorable votes.

We do not now see a likelihood that a shareholder vote will be required in the foreseeable future on any matter that is supported by the Trustees and that would require a Majority Shareholder Vote for its approval. Hence, even though the Trust must always hold an annual meeting of shareholders to elect directors in compliance with the NYSE's rules [4/], a requirement to obtain approval of an amended

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[3/] The NYSE Listed Company Manual provides, in paragraph 310(A), as follows:

> The Exchange is of the opinion that the quorum required for any meeting of the holders of common stock should be sufficiently high to insure a representative vote. In authorizing listing (whether original listing or listing of additional securities), the Exchange gives careful consideration to provisions fixing any proportion less than a majority of the outstanding shares as the quorum for shareholders' meetings. In general, the Exchange has not objected to reasonably lesser quorum requirements in cases where the companies have agreed to make general proxy solicitations for future meetings of shareholders.

When the Trust's regular quorum requirement was reduced to one-third its issued and outstanding shares, we were advised that the NYSE will generally not approve a reduction below that level.

[4/] Paragraph 302 of the NYSE Listed Company Manual provides that, "Listed companies are required to hold an annual shareholders' meeting during each

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Investment Contract by Majority Shareholder Vote would impose additional proxy solicitation expenses and could even require the Trust, if the requisite quorum or proportion of favorable votes were not achieved, to adjourn the meeting in order to engage in further solicitation for the purpose of attaining the required vote (an eventuality that in fact did occur in 1991). Therefore, we believe that a requirement to obtain Majority Shareholder Vote approval of a reduced fee would impose unjustifiable additional expenses, and could impose unnecessary delays, upon the Trust.

If the Staff agrees that it would not recommend enforcement with respect to fee reductions by the Trust that are adopted without approval by a Majority Shareholder Vote, the Trust will notify its shareholders of a fee reduction by delivery of a letter mailed with the next financial report that is required to be provided to shareholders after a fee reduction (i.e., the Trust's next quarterly, semi-annual or annual report to shareholders). The proposed fee reduction would constitute a permanent amendment to the Investment Contract. In addition, the Trust would continue to be required to obtain approval from its shareholders, by Majority Shareholder Vote, of any future material amendments to the Investment Contract, including any amendment reinstating the existing fee schedule or any decrease or modification in the nature or level of services provided by the Adviser or the Custodian.

Discussion

Section 15(a)(1) of the Investment Company Act provides, in pertinent part:

> It shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract, which contract . . . has been approved by the vote of a majority of the outstanding voting securities of such registered company and . . . precisely describes all compensation to be paid thereunder;

The fee that a registered investment company pays to its investment adviser is a material term of the adviser's contract with the company. The purpose of Section 15(a), including its requirements that a fund's investment advisory contract precisely describe the compensation payable thereunder and be approved by a Majority Shareholder Vote, is to protect shareholders of regulated investment companies from overreaching by their investment advisers.

4/ (...continued)
fiscal year."

The Staff has responded favorably to the reduction of advisory fees without a Majority Shareholder Vote in several no-action letters granted on the basis of different, but analogous, facts. In Lord, Abbet & Co. (publicly available May 16, 1977), the Staff took the position that it would not recommend enforcement action if, as the result of a court-approved settlement of a shareholder derivative action, the adviser to a registered investment company reduced the management fee payable by the investment company prior to obtaining shareholder approval of an amended contract at the next annual meeting thereafter. In USAA Mutual Fund, Inc. (publicly available January 30, 1990), the Staff stated that it would not recommend enforcement action if an investment company's advisory agreements were amended to reduce the management fee for a one-year period prior to shareholder approval where the adviser represented that it would use its best efforts to obtain shareholder approval within that period. See also PMD Investment Company (publicly available April 22, 1991). In each of these cases, the relief granted by the Staff merely permitted the deferral of the shareholder vote, not the elimination of the requirement altogether. In subsequent letters beginning in 1992, however, the Staff has approved the complete elimination of a shareholder vote to approve a fee reduction.

Thus, the letters issued to both Limited Term Municipal Fund, Inc. ("Limited Term") (publicly available October 27, 1992) and Washington Mutual Investors Fund, Inc. ("Washington Mutual") (publicly available May 14, 1993), which were described as open-end investment companies not required to hold annual meetings of shareholders, approved the complete elimination of the shareholder vote requirement where the funds proposed to permanently reduce the amount of compensation paid under their respective investment advisory agreements. In each case the no-action request letter represented that the nature and level of services provided by the advisers after the fee reduction would not change, and the fund represented that shareholder approval would be obtained for any other future amendment to its investment advisory agreement. In each case the fund argued that, under the circumstances, approval of the requested fee reduction was a foregone conclusion, that no shareholder meeting would otherwise be required in the foreseeable future and that it would serve no purpose to impose upon the fund the expense of obtaining the requisite Majority Shareholder Vote.

In order to assure that the shareholders were promptly informed of the fee reduction, in Limited Term the fund represented that the adviser would pay the costs of preparing and mailing to shareholders and prospective investors a prospectus supplement, or the incremental cost of revising and mailing the fund's prospectus, setting forth the fee change. In Washington Mutual the fund represented that it would pay the incremental cost of preparing and mailing a revised prospectus to shareholders. See also American Odyssey Funds, Inc. (publicly available October 7, 1996) and Principal Preservation Portfolios, Inc. and Prospect Hill Trust (publicly available January 11, 1996) ("Principal Preservation"), again both relating to open-

end funds. Principal Preservation may be of particular interest in this context because it permitted the approval of a new investment contract (not involving a fee reduction) without a shareholder vote in connection with a "de-spoking" (from a Hub-and-Spoke structure), even though it is not clear from the request letter that a vote to approve the new contract would have required an additional meeting (as opposed to an extra vote at a meeting that was already being held to approve the de-spoking).

We believe that the Staff has not considered whether it would recommend enforcement action in a case involving facts similar to those in Limited Term and Washington Mutual but in which the fund requesting assurance was a closed-end management investment company required to conduct annual meetings of shareholders. We believe, however, that the Trust should be permitted to effect fee reductions that are not accompanied by a decrease or modification in the services provided by the Adviser without obtaining a Majority Shareholder Vote.

First, it appears to be an obvious and fair assumption that very few shareholders of the Trust would oppose a reduction in the fees that the Trust pays to the Adviser and the Custodian to perform the same services that they were already performing. Indeed, the shareholder votes with respect to the Trust's two previous reductions in the fees paid the Adviser and the Custodian (in 1991 and 1996) were, respectively, 12,905,810 (in favor) to 163,798 (opposed) and 23,257,016 to 39,193. (We note in this connection that the 1991 vote was also required because of a change in control of the Adviser, opposition to which may have accounted for the higher (but still very low proportionate) "no" vote in 1991 than was recorded in 1996.) Such a fee reduction should present no concern of overreaching by the Adviser or Custodian because the result would be a clear benefit to the Trust and its shareholders. In all other respects the Investment Contract and the obligations of the Adviser and the Custodian thereunder would remain the same, with no decrease or modification in the nature or level of services provided by the Adviser or Custodian under the Investment Contract.

Second, although the Trust is required to conduct an annual meeting of shareholders, the submission of a proposal to approve a reduced fee by a Majority Shareholder Vote would increase the costs related to preparing and mailing the proxy statement and solicitation of the Trust's shareholders with no apparent benefit to shareholders. Such costs could become particularly significant if the proposal to shareholders were made and the shareholders failed to approve the reduced fee in a timely manner, resulting in a need to adjourn the meeting in order to obtain the requisite shareholder vote or quorum. Again, we note in this connection that we have no reason to believe that a need will arise in the foreseeable future to submit any other matter to a shareholder vote that is supported by the Trustees and that requires a Majority Shareholder Vote for its approval.

Third, the Investment Contract would be amended in accordance with the provisions of Section 15 of the Investment Company Act, other than the shareholder approval requirement, to precisely describe the new fee. In particular, if a fee reduction is agreed upon, the Trust will obtain approval of the fee reduction from the Trustees, including a majority of the independent Trustees. Upon its effectiveness, the proposed fee reduction would be a permanent amendment to the Investment Contract.

Fourth, the Trust will notify its shareholders of the fee reduction by delivery of a letter mailed with the next financial report that is required to be provided to shareholders after the reduction (i.e., a quarterly, semi-annual or annual report to shareholders).

Finally, shareholders would approve any future material amendments to the Investment Contract, including any amendment reinstating the existing fee schedule or any decrease or modification in the nature or level of the services provided by the Adviser or the Custodian.

On the basis of the foregoing, we hereby request confirmation that the Staff would not recommend enforcement action to the Commission against the Adviser if the Adviser acts as investment adviser of the Trust under the Investment Contract after the implementation of a permanent reduction in the amount of the compensation paid under the Investment Contract to the Adviser, the Custodian, or both of them, without seeking and obtaining shareholder approval.

If the Staff requires any further information in connection with this request, or believes it would be helpful to discuss any of these points, please call me at the number shown above. If the Staff is unable upon its review of this letter to confirm that it will not recommend enforcement action, I respectfully request that the Staff call me to discuss possible revisions or additional submissions that could make a no-action position available.

Very truly yours,

Edwin C. Laurenson