Investment Advisers Act of 1940 – Section 203(a)
Lockheed Martin Investment Management Company

June 5, 2006

Our Ref. No. 20052292
Lockheed Martin Investment Management Company
File No. 801-56611

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter dated May 5, 2006 requests our written assurance that we would not recommend enforcement action against Lockheed Martin Investment Management Company ("LMIMCo") under section 203(a) of the Investment Advisers Act of 1940 ("Advisers Act") as a result of LMIMCo's withdrawal of its registration as an investment adviser under the Advisers Act.[1] LMIMCo is a wholly owned subsidiary of Lockheed Martin Corporation ("Lockheed") whose sole purpose is to provide investment advisory services to various employee benefit plans and trusts of Lockheed and certain of its affiliates (the "LMC Plans").[2]

As you note in your letter, the Division addressed the status under the Advisers Act of employers that provide certain types of investment advice in the context of certain employee benefit plans in two letters to Olena Berg (pub. avail. Dec. 5, 1995 and Feb. 22, 1996) (together, the "Berg Letters"). The Berg Letters did not specifically address LMIMCo's situation. For instance, LMIMCo provides investment advisory services to defined benefit plans and to foreign employee benefit plans that are maintained to provide benefits to non-U.S. participating employees of certain of Lockheed's non-U.S. affiliates and that are not subject to ERISA. In addition, Lockheed receives reimbursements for the direct costs and expenses of LMIMCo's advisory services from certain of the LMC Plans.

Nonetheless, based on the facts and representations set forth in your letter, we would not recommend enforcement action to the Commission against LMIMCo under section 203(a) of the Advisers Act as a result of LMIMCo's withdrawal of its registration

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[1] LMIMCo filed its Form ADV-W on March 31, 2006 based on discussions with the staff. See infra note 3.

[2] LMIMCo advises 24 Lockheed trusts (each of which presumably would be deemed to be LMIMCo's client). As a result, LMIMCo is precluded from relying on section 203(b) of the Advisers Act, which generally exempts from registration any investment adviser that, during the preceding twelve months, had fewer than 15 clients and who neither holds itself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940 ("Company Act").

as an investment adviser under the Advisers Act.[3] Our position is based particularly on your representations that:

- LMIMCo is a wholly owned subsidiary of Lockheed that was established, and has been operated, for the sole purpose of providing investment advisory services to the LMC Plans;

- LMIMCo does not hold itself out to the public as an investment adviser, and provides investment advice only to the LMC Plans;

- The LMC Plans are established solely for the benefit of employees of Lockheed and its affiliates, and comprise employee benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), foreign employee benefit plans, and plans that consist solely of Lockheed assets;

- The only amounts received by Lockheed and LMIMCo in connection with the LMC Plans are reimbursements that are subject to the restrictions imposed by ERISA; and

- None of the LMC Plans is required to register as an investment company under the Company Act.

This response expresses our views on enforcement action only and does not express any legal conclusions on the issues presented. Because our position is based on the facts and representations in your letter, you should note that any different facts or representations may require a different conclusion.[4]

Kenneth C. Fang
Senior Counsel

Linda A. Schneider
Senior Counsel

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[3] This letter confirms the position taken regarding LMIMCo under Section 203(a) of the Advisers Act that the staff provided orally on March 15, 2006 to Catherine S. Bardsley of Kirkpatrick & Lockhart Nicholson Graham LLP, counsel to LMIMCo.

[4] We note that the antifraud provisions of Section 206 of the Advisers Act apply to all investment advisers, whether required to be registered or not.

INCOMING LETTER:

May 5, 2006

VIA HAND DELIVERY

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U. S. Securities and Exchange Commission
Mail Stop 0506
100 F Street, N.E.
Washington, D.C. 20549

Re: Lockheed Martin Investment Management Company

Dear Mr. Scheidt:

We are writing on behalf of Lockheed Martin Investment Management Company ("LMIMCo") to seek your written assurance that, based on the facts set forth in this letter, the staff of the Division of Investment Management (the "Staff") will not recommend enforcement action to the U.S. Securities and Exchange Commission (the "Commission") as a result of LMIMCo's withdrawal of its registration as an investment adviser under Section 203 of the Investment Advisers Act of 1940, as amended ("Advisers Act").[5]

Based on the Staff's prior positions and, in particular, the Staff's recognition of the "unique nature of the employment relationship,"[6] we believe that LMIMCo is not engaged in the business of providing investment advice to others concerning securities.

[5] Based on the oral no-action assurance provided by the Staff to the undersigned on March 15, 2006, after discussions regarding LMIMCo's no-action request, LMIMCo filed its Form ADV-W on March 31, 2006.

[6] Letter to Olena Berg, SEC No-Action Letter (Feb. 22, 1996) ("1996 Berg Letter").

FACTUAL BACKGROUND

LMIMCo's Organization and Operations

LMIMCo is a wholly owned subsidiary of Lockheed Martin Corporation ("Lockheed Martin") whose sole purpose is to provide investment advisory services to various employee benefit plans and trusts of Lockheed Martin and certain of its affiliates (collectively, the "LMC plans"). LMIMCo was created in 1997 for reasons primarily relating to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), namely, to create a separate entity within the Lockheed Martin corporate structure to serve as a "named fiduciary" of the LMC plans subject to ERISA.

Prior to its organization, LMIMCo's functions were conducted by Lockheed Martin personnel within the Treasury department of Lockheed Martin. Although LMIMCo and Lockheed are separate legal entities, LMIMCo has no financial operations or personnel separate from Lockheed Martin. All LMIMCo personnel, including all persons involved in the provision of investment advisory services to the LMC plans, are employees of Lockheed Martin. In addition, LMIMCo does not have a separate accounting staff. Lockheed Martin's corporate accounting department maintains LMIMCo's books and records. Since LMIMCo is a separate corporate entity with its own tax identification number, Lockheed Martin maintains a separate balance sheet, income statement and tax schedule for LMIMCo to reflect Lockheed Martin's income and expenditures with respect to LMIMCo's operations. However, such statements and schedules are used solely for consolidation into Lockheed Martin's financial statements as part of corporate headquarters' financials. Lockheed Martin leases the office space used by LMIMCo personnel and pays all other expenses in connection with LMIMCo's operations. LMIMCo does not maintain separate bank accounts. LMIMCo has no assets, pays no expenses, receives no fees or payments for its services and otherwise receives no revenue.

LMIMCo's Registration under the Advisers Act

In 1999, LMIMCo filed its Form ADV with the Commission primarily in order to avail itself of a U.S. Department of Labor Prohibited Transaction Class Exemption applicable to in-house asset managers ("PTE 96-23").[7] At that time, LMIMCo directly managed a significant portion of the LMC plans' assets and, thus, contemplated that reliance on PTE 96-23 would facilitate that management. Currently, however, LMIMCo directly manages a significantly smaller portion of the LMC plans' assets (as described further below), and the availability of PTE 96-23 is less relevant to LMIMCo's operations.

LMIMCo's decision to register under the Advisers Act was also motivated, in part, by its uncertainty at the time as to whether registration under the Advisers Act is

[7] Prohibited Transaction Class Exemption 96-23, 61 Fed. Reg. 15975 (Apr. 10, 1996), which provides an exemption from certain of the prohibited transaction provisions of ERISA and Section 4975 of the Internal Revenue Code, applies only where in-house asset management is provided through a separate, affiliated entity registered under the Advisers Act.

required when managing benefit assets of employees of Lockheed Martin joint ventures and of former Lockheed Martin employees who were transferred in connection with divestitures. LMIMCo no longer manages the benefit assets of the joint venture that had occasioned the uncertainty and, indeed, now believes that its management of the benefit assets of the venture, which was a Lockheed Martin affiliate, would not alone have required its registration under the Advisers Act.

The second situation, LMIMCo's management of benefit assets of employees of businesses sold by Lockheed Martin, is a situation that commonly arises with respect to plans in corporate divestiture transactions and reflects the reality that it routinely takes a period of time to identify definitively the benefit liabilities of those employees transferring with the divested business. In these situations, the timing of the transfer of the benefit assets depends on the terms of such transfer, as set forth in the purchase and sale agreement negotiated by Lockheed Martin and the purchaser. Such terms usually provide for Lockheed Martin to calculate the employee benefit liabilities being transferred and the purchaser to verify such calculation with any disputes on the calculation to be resolved by a third party actuary agreed upon by the parties. The transaction agreement usually requires Lockheed Martin to transfer the assets in two steps in order to minimize the chance that more assets are transferred than are necessary in order to satisfy the actual liabilities transferred, a process that may take up to a year or more.[8] LMIMCo no longer believes that such activity might require registration under the Advisers Act.

LMIMCo's Current Investment Advisory Services

In general, LMIMCo is responsible for appointing and monitoring third-party investment managers and selecting and monitoring available investment options for the LMC plans. The LMC plans are established solely for the benefit of participating employees of Lockheed Martin and certain of its affiliates. Currently, LMIMCo provides investment advisory services to 24 separate trusts holding LMC plan assets.[9]

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[8] Typically, after Lockheed Martin has made a preliminary determination of the employee benefit liabilities that are to be transferred, an initial transfer of assets equal to 80% - 85% of Lockheed Martin's estimate occurs within 3 to 4 months after the closing. A final transfer of assets occurs after the purchaser has verified the final calculation of liabilities, which may occur 9 to 12 months after the initial transfer of assets. The asset transfers may be either in cash or in kind. The calculation of liabilities depends upon many factors, including the identification of those employees who will transfer with the business, which identification may not be finalized until one month after the closing, the number of plans under which such employees may have earned benefits, the complexity of the benefit calculations of such employees, whether the purchaser assumes responsibility for the benefits of retirees related to that business, and whether Lockheed Martin may pay benefits for a period after closing while the purchaser is preparing its benefits administration for the employee benefit liabilities that it has assumed. Since the amount of assets to be transferred, if any, is uncertain, LMIMCo manages those assets as part of the LMC plans until such time as the asset transfer occurs.

[9] We note that the current number of these trusts would preclude LMIMCo's reliance on the exemption afforded by Section 203(b)(3) of the Advisers Act. However, even were the number less than the prescribed fifteen, LMIMCo would not seek to rely on Section 203(b)(3), because the prospect of future acquisitions by Lockheed Martin makes continuing applicability of this exemption uncertain. Rather, LMIMCo believes that it is not "engaged in the business" of providing investment advice to others and,

Most of the LMC plans are employee benefit plans covered by ERISA. LMIMCo's provision of advisory services to those plans is subject to the stringent fiduciary requirements of Title I of ERISA. The assets of the ERISA-covered LMC plans that are defined benefit plans are primarily managed directly by third-party investment managers, which LMIMCo selects, monitors and, as it deems appropriate, terminates.[10] For the ERISA-covered LMC plans that are defined contribution plans, LMIMCo selects, monitors and, as it deems appropriate, changes the investment options offered to participants in those plans.

The other LMC plans are (1) deferred compensation or other "non-qualified" plans that are not subject to ERISA or (2) foreign LMC plans. The non-qualified plans consist of Lockheed Martin assets that are managed by LMIMCo, through a number of third-party investment managers it retains, to meet Lockheed Martin's future obligations under the plans.[11] The foreign LMC plans are defined benefit or defined contribution plans that are maintained to provide benefits to non-U.S. participating employees of certain of Lockheed Martin's non-U.S. affiliates.

LMIMCo does not provide or offer to provide investment advice to individual LMC plan participants or to the general public. LMIMCo's only clients are the LMC plans and related trusts.[12]

As described above, Lockheed Martin pays the costs of LMIMCo's operations, and all LMIMCo's personnel are Lockheed Martin employees. Because ERISA permits a fiduciary to receive reimbursement for its "direct expenses," which do not include any

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thus, as a threshold matter, not an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act.

[10] LMIMCo currently manages directly the private equity allocation of the Lockheed Martin Corporation Master Retirement Trust ("Master Retirement Trust"), approximately 3.5% of the assets of the Master Retirement Trust, typically by selecting limited partnerships that make private equity investments and may also offer coinvestment opportunities to limited partners. Similarly, LMIMCo oversees real estate investments held in the Master Retirement Trust as interests in limited partnerships and bank collective trust funds. LMIMCo is also responsible for selling two undeveloped real estate properties held in the Master Retirement Trust. Collectively, these real estate investments and properties comprise less than 0.2% of the assets of the Master Retirement Trust.

[11] LMIMCo also monitors the Lockheed Martin common stock held by the third-party trustee of the Lockheed Martin Master Deferred Management Incentive Compensation Plan Trust ("DMICP Trust"), a non-qualified trust not subject to Title 1 of ERISA. One of the investment options offered under the Lockheed Martin Deferred Management Incentive Compensation Plan is a return based on the market value and investment return of the Lockheed Martin common stock ("Company Stock Option"). The trustee of the DMICP Trust manages the purchase of the Lockheed Martin common stock and votes in its sole discretion the shares held by the DMICP Trust. LMIMCo's role in determining whether the trustee should purchase shares of Lockheed Martin common stock is an asset allocation decision similar to those made by LMIMCo with respect to the other trusts. LMIMCo typically directs the trustee to purchase shares when the DMICP Trust may have insufficient shares to cover Lockheed Martin's liabilities under the Company Stock Option.

Other than as described in this footnote and in footnote 6, *supra*, LMIMCo does not manage directly assets of any other ERISA-covered or non-ERISA covered plan.

[12] It is our understanding that none of the LMC plans are required to register as investment companies under the Investment Company Act of 1940, as amended ("Investment Company Act").

profit element or any allocable portion of overhead costs,[13] Lockheed Martin is reimbursed, as permitted under ERISA, for LMIMCo's direct costs and expenses incurred in providing advisory services to certain LMC plans. Lockheed Martin receives no other payments in connection with LMIMCo's services to the LMC plans, and LMIMCo does not receive any fees or other payments for its services.

As discussed below, since LMIMCo offers and provides advisory services only for the LMC plans without a profit motive and does not hold itself out to the public as an investment adviser, we do not believe that LMIMCo is "engaged in the business" of providing investment advice to others.

DISCUSSION

General Applicability of the Advisers Act

Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "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."[14] This definition includes three essential elements. First, an investment adviser must provide advice concerning securities. Second, an investment adviser must receive compensation for such services. Third, an investment adviser must be "engaged in the business" of providing such services to others. To be deemed an "investment adviser" under Section 202(a)(11) of the Advisers Act, a person must satisfy all three of these elements.[15]

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[13] *See* 29 CFR § 2550.408c-2.

[14] Section 202(a)(11) contains exclusions from the definition of investment adviser for certain banks, lawyers, accountants, engineers, teachers, broker-dealers, newspaper and magazine publishers, persons giving advice exclusively about government securities, and persons who are not within the intent of the Advisers Act, as provided by SEC rules or exemptive orders. LMIMCo does not appear to qualify for any of these exclusions.

[15] Given the Staff's broad interpretation of the "advice" and "compensation" elements of the investment adviser definition, we are not disputing in this request that LMIMCo satisfies those elements. For example, the Staff takes the view that a person who provides advice regarding the selection and retention of investment managers or who makes recommendations to clients with respect to the advisability of investing in securities in general or specific securities in particular satisfies the advice element of the investment adviser definition. *See, e.g.,* FPC Securities Corp., SEC No-Action Letter (Dec. 1, 1974) (Staff regarded the provision of advice about the selection of investment advisers as "advising" others within the meaning of Section 202(a)(11)); William Bye Co., SEC No-Action Letter (Apr. 26, 1973) (same); *see also* Applicability of Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (Oct. 8, 1987) ("Release 1092"). In addition, the Staff broadly construes the "compensation" element of the investment adviser definition to encompass "the receipt of any economic benefit," *see* Release 1092, and has indicated that the receipt of reimbursement of administrative expenses incurred in the provisions of advisory services may constitute "compensation" within the meaning of Section 202(a)(11). *See, e.g.,* Daughters of Charity National Health System, Inc., SEC No-Action Letter (Apr. 3, 1998) (Staff unable to conclude that reimbursement of certain operating expenses incurred in the provision of investment advice would not constitute "compensation"); Northeastern Pennsylvania Synod of the Evangelical Church in America, SEC No-Action Letter (May 3, 1988) (same).

In particular, in two interpretive releases published in the 1980s, the Staff summarized its positions with respect to all three elements of this definition by addressing a variety of circumstances under which financial planners, pension consultants, sports or entertainment representatives, and others who provide investment advisory services to others, as a component of other financial advisory services for which compensation is received, would be deemed investment advisers under the Advisers Act.[16] In Release 1092, the Staff recognized that whether a person satisfies the "business" element of the investment adviser definition depends on all of the relevant facts and circumstances.[17] In particular, the Staff stated that a person providing advice is engaged in the business of doing so if it: (1) holds itself out as an investment adviser or as one who provides investment advice; (2) receives any separate or additional compensation that represents a clearly definable charge for providing advice about securities; or (3) on anything other than rare, isolated or non-periodic instances provides specific investment advice.[18]

However, Release 1092 involved the determination of the investment adviser status of persons that were already engaged in the business of providing financial services to others. LMIMCo's activities are considerably more limited than those in the examples cited in the interpretive releases that required registration. Moreover, LMIMCo provides investment advisory services solely by virtue of, and in the place of, Lockheed Martin in its role as the employer-sponsor of the LMC plans. As discussed below, more recent Staff positions establish a standard for determining investment adviser status in the employment context that differs slightly from that applied in the broader circumstances of Release 1092. We believe that these Staff positions support the conclusion that LMIMCo is not engaged in the business of providing investment advisory services to others and should not be deemed an investment adviser within the meaning of Section 202(a)(11).

"Unique Nature of Employment Relationship"

The Staff has recognized that the Advisers Act was intended to govern commercial relationships and not employer-employee relationships. In its 1995 letter to Olena Berg, Assistant Secretary of the U.S. Department of Labor, the Staff specifically stated that "the employer-employee relationship is unlike the commercial relationship between an investment adviser and its client that the Advisers Act was intended to regulate."[19] In that letter, the Staff considered whether employer-sponsors of defined contribution plans that provide certain types of investment-related information to their

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[16] *See* Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons who Provide Investment Advisory Services as an Integral Component of Other Financial Related Services, Investment Advisers Act Release No. 770 (Aug. 13, 1981); Release 1092. In Release 1092, the Staff stated that, although the views reflected in the release are based substantially on the 1981 release, Release 1092 revises the prior release in certain respects.

[17] *See, e.g.*, Release 1092, *supra*.

[18] *Id. See also*, Touche Holdings, Inc., SEC No-Action Letter (Dec. 30, 1987) (Staff found that a wholly owned subsidiary of Touche Ross & Co. that managed the assets of a limited partnership whose limited partners were the parent company and certain partners and principals of the parent company was "in the business" of providing investment advice because of potential for profit to some partners and fact that subsidiary's advice would not be on a rare, isolated and non-periodic basis) ("Touche Holdings").

[19] Letter to Olena Berg, SEC No-Action Letter (Dec. 5, 1995) ("1995 Berg Letter").

employees who participate in those plans were investment advisers. In determining that such employers were not investment advisers, the Staff made clear that such employers provide investment-related information to their employees typically without a profit motive, but with the intent to educate their employees about retirement plans and investment alternatives through the plans.

Employer is Not Engaged in Business of Providing Investment Advice

In the 1995 Berg Letter, the Staff determined that an employer-sponsor that provides investment-related information to its employees who participate in the employer's defined contribution plan would not be engaged in the business of providing investment advice *unless* the employer: (i) holds itself out to the public as providing investment advice or (ii) receives separate or additional compensation from employees or third parties that represents a clearly definable charge for providing investment advice. The Staff concluded that, if neither of these two specific circumstances is present, an employer would not, as a result of its advisory activities, be in the business of providing advice to others and, therefore, would not fall within the Advisers Act definition of an investment adviser.

In making this determination, the Staff analyzed whether an employer-sponsor is in the business of providing investment advice in a manner that differs from the general test articulated in Release 1092. Release 1092 sets forth three circumstances in which a person is in the business of providing investment advice. The 1995 Berg Letter recognizes only two of those circumstances and omits the circumstance of providing investment advice on other than a rare, isolated or non-periodic basis (presumably because the employer would provide the advice to its employees on a periodic basis). The 1995 Berg Letter reflects the Staff's view that the mere fact that an employer-sponsor provides investment advice to an employee may not alone cause an employer-sponsor to be in the business of providing investment advice to its employees.

We note that the 1995 and 1996 Berg Letters did not specifically address the selection and monitoring of investment advisers as part of the advisory services provided by the employer or an employer's reimbursement for the direct costs and expenses of its providing advisory services.[20] Nevertheless, we believe that LMIMCo meets the test outlined in the 1995 Berg Letter and, accordingly, is not engaged in the business of providing investment advice.

LMIMCo does not hold itself out to the public as an investment adviser. The Staff has stated that a person may be viewed as holding itself out as an adviser if it: (1) advertises itself as an "investment adviser;" (2) refers to itself as an "investment adviser;" (3) maintains a listing as an investment adviser in any telephone, business, building, or other directory; (4) uses letterhead, stationery, or business cards indicating any investment advisory activity; or (5) otherwise lets it be known, through word of mouth or other means, that it is willing to provide investment advisory services.[21] LMIMCo makes

[20] We also note that, in the 1996 Berg Letter, the Staff stated that its position in the 1995 Berg Letter "applies regardless of the type of investment-related information provided" by the employer.

[21] *See also* Applicability of Advisers Act to Financial Advisors of Municipal Securities Issuers, Staff Legal Bulletin No. 11 (Sept. 19, 2000) ("Staff Bulletin"). In each of these instances, the Staff is

no public offer or provision of its advisory services. LMIMCo's services are provided only to certain employee benefit plans and trusts of Lockheed Martin and its affiliates and not more generally to "others" outside of that organization.[22] LMIMCo does not advertise its services to the public or otherwise indicate that it is willing to provide advisory services to any persons other than the LMC plans. In fact, LMIMCo has never provided investment advice or sought to provide investment advice to entities other than those with which it is affiliated. LMIMCo also does not maintain a listing as an investment adviser in any telephone, business, building, or other directory or use letterhead, stationery, or business cards indicating any investment advisory activity.

Further, we believe that LMIMCo (and Lockheed Martin) does not receive compensation for providing investment advice for purposes of the "business" element of Section 202(a)(11).[23] In determining whether a person receives such compensation, the Staff generally has focused on whether the person: (1) charges clients for advice separately from other fees; (2) receives any compensation that represents a "clearly definable" charge for providing advice about securities, regardless of whether that compensation is separate from or included in any overall compensation; or (3) receives transaction-based compensation if the client implements the advice.[24] Although neither LMIMCo nor Lockheed Martin receives any fees from employees or other third parties for LMIMCo's investment management services, certain LMC plans reimburse Lockheed Martin for its direct costs and expenses relating to LMIMCo's provision of advisory services to those LMC plans. However, these reimbursements are not advisory fees and not transaction-based compensation. As required by ERISA, the reimbursements received by Lockheed Martin do not include any profit element. Accordingly, we believe these reimbursements lack a "business" element and should not be deemed to be a separate or clearly definable fee for providing investment advice for purposes of Section 202(a)(11).

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considering how a person presents itself to the public and, more particularly, whether the person's activity reflects a direct or indirect public solicitation of advisory business. LMIMCo, of course, is currently a registered investment adviser and has been from time to time identified as such in Lockheed Martin's Form 10-K and related financial filings. However, we do not believe that any such purely factual disclosure regarding LMIMCo in a required filing would constitute "holding out" for purposes of Section 202(a)(11). Notwithstanding, if the Staff grants the no-action relief requested herein, LMIMCo would cease to be referred to in such fashion.

[22] Although LMIMCo may manage benefit assets of employees of businesses sold by Lockheed Martin until such assets are transferred to a plan of an acquiring entity, this arrangement clearly arises from a prior employer-employee relationship and is due to circumstances beyond LMIMCo's control; therefore, this arrangement should not require LMIMCo to register under the Advisers Act (or, perhaps more importantly, not preclude the Staff's provision of the no-action relief requested). *See* Honeywell International Inc. Savings Plan Trust, SEC No-Action Letter (Oct. 7, 2002) (Staff stated that it would not take enforcement action if a master trust holding employee benefit plan assets that is exempt from registration under the Investment Company Act pursuant to Section 3(c)(11) did not register under the Investment Company Act for the limited, transition period during which it would not be exempted under Section 3(c)(11) as a result of a corporate restructuring).

[23] *See* Release 1092, *supra*.

[24] *See* Staff Bulletin, *supra*; Release 1092, *supra*.

LMIMCo Not Engaged in Business of Providing Investment Advice

Based on the foregoing, we do not believe that LMIMCo is engaged in the business of providing investment advice. Under the 1995 Berg Letter, the Staff's conclusion that employers are not in the business of providing investment advice to their employees reflects the fact that employers typically do not provide their employees investment-related information in a commercial relationship, *i.e.*, with a profit motive.[25] LMIMCo provides investment advisory services only to employees of Lockheed Martin and certain of its affiliates through the LMC Plans. For those services, LMIMCo receives no payments and Lockheed Martin only receives reimbursements of direct expenses as permitted by ERISA. Under ERISA, these reimbursements may not include any profit element.[26] Given the "unique nature" of the employer-employee relationship,[27] we do not believe LMIMCo is engaged in the business of providing investment advice.

Additional Considerations

We do not believe that the facts and circumstances of LMIMCo's situation are of potentially broad application, and there may be circumstances under which a subsidiary would not be treated as the employer-sponsor for purposes of the 1995 and 1996 Berg Letters. Further, we are aware that there are other corporate plan sponsors whose wholly owned subsidiaries are registered under the Advisers Act; however, we believe that LMIMCo's investment advisory operations may be distinguishable from those of such other registered subsidiaries.[28]

We also do not believe that there is any public policy basis for deeming LMIMCo to be in the business of providing advisory services to others. As mentioned above,

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[25] 1995 Berg Letter, *supra.* As the Staff has previously noted, "[t]he concept of 'business' usually includes the making of a profit or gain for someone. Venture Capital Network, Inc., SEC No-Action Letter (May 7, 1984) (Staff noted that non-profit status of an organization will not necessarily preclude it from being deemed to be engaged in the business of advising others but "business" entails notion of seeking a profit or gain) ("Venture Capital").

[26] Thus, Touche Holdings, *supra*, is distinguishable, because the Staff found the presence of profit potential, a factor not present in the case of LMIMCo and Lockheed Martin.

[27] 1996 Berg Letter, *supra.*

[28] Based only on a review of Forms ADV filed by other wholly owned advisory subsidiaries of corporate plan sponsors, it is our understanding that, unlike LMIMCo, some of these registered, wholly owned advisory subsidiaries use firms or other persons to solicit advisory clients and/or have clients that are banking or thrift institutions, charitable organizations, state or municipal government entities, or corporations or other businesses not listed in Item 5.D(1) through (7) of the Form ADV. We are unable to determine whether a wholly owned advisory subsidiary's non-benefit plan clients are solely affiliates of such registered, wholly owned advisory subsidiary. Other registered, wholly owned advisory subsidiaries are investment advisers to investment companies registered under the Investment Company Act. Presumably, if such investment companies had qualified for the "single trust exception" to registration under the Investment Company Act, such wholly owned advisory subsidiaries would not need to register under the Advisers Act.

The determination as to whether an investment adviser is engaged in the business of providing investment advice is factual. LMIMCo has not had access to all of the facts for each registered, wholly owned advisory subsidiary in order to determine whether such subsidiary engages in an investment advisory business. A wholly owned advisory subsidiary's activities may constitute holding itself out as an investment adviser; however, LMIMCo may not be aware of such activities.

LMIMCo does not provide its services to the general public. To the extent that LMIMCo provides advisory services with respect to LMC plans that are subject to ERISA, LMIMCo must satisfy the stringent fiduciary standards of ERISA, which provides substantial protections to such plans and their respective participants. Further, with respect to LMC plans that are not subject to ERISA, the assets of these plans are assets of LMIMCo's parent company, Lockheed Martin.[29]

We believe that the services provided by LMIMCo, a wholly owned subsidiary of Lockheed Martin and whose personnel who are employees of Lockheed Martin, fall within the realm of the employer-employee relationship which the Advisers Act was not intended to regulate. LMIMCo's services are the product of the employer-employee relationship described in the 1995 and 1996 Berg Letters, rather than the typical commercial relationship that exists between an investment adviser and its client.

CONCLUSION

Based on the facts and analysis set forth above, we believe that LMIMCo is not engaged in the business of providing advice to others concerning securities. Thus, we respectfully request that, based upon the foregoing, the Staff provide written assurance that it will not recommend enforcement action to the Commission as a result of LMIMCo's withdrawal of its registration as an investment adviser under the Advisers Act. If you have any questions about this request, please let me know.

Very truly yours,

Catherine S. Bardsley

cc: George R.A. Jones, Esq.
Lockheed Martin Investment
Management Company

[29] With respect to the assets held in foreign trusts for the benefit of participating non-U.S. employees of certain non-U.S. affiliates of Lockheed Martin, the relevant foreign government, rather than the Commission, would have the primary regulatory interest.