



DIVISION OF
INVESTMENT MANAGEMENT

PUBLIC

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

PUBLIC

IAA
SECTION 302(a)(11)
RULE _____
PUBLIC
AVAILABILITY Aug 9, 1996

August 9, 1996

Mr. Sacha Stawski
99 Pond Avenue, #613
Brookline, MA 02146

Dear Mr. Stawski:

Your letter of May 31, 1996, has been referred to the Division of Investment Management for response. In your letter, you state that your company intends to establish a subsidiary in the United States. You state that this subsidiary will provide trading recommendations and analysis via fax and internet related services to financial institutions, corporations and private investors in the U.S. You request information regarding registration requirements for such activities.

The Commission regulates investment advisers primarily under the Investment Advisers Act of 1940 ("Advisers Act"). Section 202(a)(11), in pertinent part, defines the term "investment adviser" to mean any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who issues or promulgates analyses or reports concerning securities. Section 203(a) of the Advisers Act requires an investment adviser that uses the U.S. mails, telephone lines, or other interstate means of communication, in connection with its business as an investment adviser, to register under the Advisers Act.

Although we do not have sufficient information upon which to base a determination, you should be aware that activities such as providing trading recommendations and analysis to U.S. investors may bring the proposed subsidiary within the definition of investment adviser if compensation is received, directly or indirectly, for such activities. I am enclosing for your information several letters issued by the Division on the question of whether information relating to securities constitutes an analysis or report concerning securities for purposes of Section 202(a)(11).¹ You may

¹ See, e.g., Datastream International (pub. avail. Mar. 15, 1993); Investex Investment Exchange Inc. (pub. avail. April 9, 1990).

wish to review these letters to determine whether the information provided by the proposed subsidiary would fall within the statutory language as interpreted by the staff.

In addition, you should note that Section 202(a)(11)(D) of the Advisers Act excludes from the definition of investment adviser any publisher of a bona fide newspaper, news magazine or business or financial publication of general and regular circulation.² To qualify for the exclusion under Section 202(a)(11)(D), a publication must:

- (1) offer only impersonalized advice, i.e., advice not tailored to the individual needs of a specific client or group of clients;
- (2) be "bona fide" or genuine, in that it contains disinterested commentary and analysis as opposed to promotional material; and
- (3) be of general and regular circulation, i.e., not timed to specific market activity or to events affecting or having the ability to affect the securities industry.³

The staff generally declines to express a view on whether a person would qualify for the exclusion because this is primarily a factual, rather than a legal, determination. If you meet the definition of an investment adviser under the Advisers Act but do not qualify for the publisher's exclusion, or for any other exclusion from the definition of investment adviser, or for an exemption from registration under Section 203(b), you must register with the Commission as an investment adviser.⁴ I have enclosed with this letter a copy of the Commission's Investment Adviser Registration Package, which contains the forms

² A person who provides advice about securities using a fax machine or the internet may qualify for the publisher's exclusion.

³ See SEC v. Lowe, 472 U.S. 181 (1985).

⁴ The exclusions from the definition of an investment adviser are set forth in Section 202(a)(11) of the Advisers Act. Section 203(b) contains four limited exemptions from registration. However, you should note that if an adviser uses a publicly available electronic medium such as a World Wide Web site to provide information about its services, the adviser would not qualify for the exemption from registration in Section 203(b)(3) of the Advisers Act. See Investment Company Act Release No. 21945 (May 15, 1996).

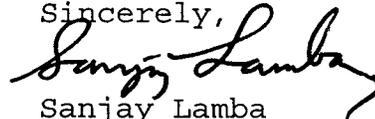
Mr. Sacha Stawski
August 9, 1996
Page 3

necessary to register as an investment adviser should you determine it necessary to do so, as well as a copy of the Advisers Act, the rules under that Act, and other supplemental information, including Release No. 1092, which discusses the definition of an investment adviser in more detail.

In addition to regulation under federal law, individual states also regulate investment advisers. The names and addresses of state officials can be obtained by contacting the North American Securities Administrators Association, Inc., One Massachusetts Avenue, N.W., Suite 310, Washington, D.C. 20001, Telephone: (202) 737-0900.

We recommend that you consult an attorney who is familiar with the U.S. federal securities laws. I hope that you find this information helpful. If you have any further questions, please contact this office at (202) 942-0659.

Sincerely,



Sanjay Lamba
Law Clerk

Enclosures

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A DIVISION OF NITO GMBH GERMANY*

FAX- COVER PAGE

To: S.E.C.		For information call: Sacha Stawski	
Fax: 1-202-6289001		Company: NiTo GmbH	
Date: 5/31/96	Time: 16:30:48	At:	
Subject: Information		Fax: +1 617 264 7468	

Dear Sir / Madam,

We would be grateful, if you could fax (or send) us information on SEC registration requirements, including all the required application/registration documentation).

We are a German company looking to establish a US subsidiary. We do not trade or broker ourselves, but provide trading recommendations and analysis via a number of different fax and Internet related services for financial institutions, corporates and private investors.

Please use the above stated fax number (and address).

Faithfully,

Sacha Stawski.

Office of Filings
and Information Services

JUN 11 1996

Public Reference Branch

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