

From: Jordan, Nora M.
Sent: Tuesday, May 24, 2011 3:26 PM
To: Vaughan, David A.
Cc: Rowland, Gregory S.
Subject: Non-U.S. advisers and Unibanco

Dear David:

We represent several global asset managers that rely on the *Unibanco* line of SEC no-action letters to structure their U.S. and non-U.S. investment advisory operations. These clients noted that the SEC's release proposing rules to implement the new adviser registration exemptions (i.e., the exemptions enacted as part of the Dodd-Frank Act) cited the *Richard Ellis* no-action letter when discussing the registration obligations of non-registered foreign affiliates of registered advisers, but did not also acknowledge the *Unibanco* line of letters. These clients are thus concerned that there may be some uncertainty as to whether *Unibanco* and its progeny will continue to be viable after the Dodd-Frank amendments become operative.

Our clients have thus asked us to write to you to request that the SEC's final release for the exemptive rules make explicit that the *Unibanco* line of SEC no-action letters will continue to apply. While the *Unibanco* line would presumably continue to apply in other situations as well, certain of these clients would like for the final release to provide clarification with respect to a particular scenario. Specifically, they request that the final release confirm that, where a non-U.S. adviser uses the advisory services of its U.S. registered adviser affiliate to advise non-U.S. clients (including non-U.S. funds) and so long as the non-U.S. adviser complies with the *Unibanco* line, (i) the non-U.S. adviser would not be integrated with the U.S. affiliate and (ii) the U.S. registered adviser's U.S. office would not be deemed a "place of business" in the United States of the non-U.S. adviser, in each case for purposes of determining whether the non-U.S. adviser must register.

We believe that it would be consistent with the protection of investors for the SEC to acknowledge the continued viability of the *Unibanco* line. In particular, the framework established by those letters ensures that U.S. clients would not be disadvantaged by the unregistered non-U.S. adviser, because, among other things, (a) the non-U.S. adviser and its personnel involved in giving advice to U.S. clients must be deemed associated persons of the U.S. registered adviser, (b) the non-U.S. adviser must submit to the jurisdiction of U.S. courts for U.S. securities law matters relating to U.S. clients and (c) the non-U.S. adviser generally must make various records and personnel available to the SEC upon demand. This framework thus ensures that the activities of the registered U.S. adviser and its personnel are governed by U.S. adviser regulation and that, even though the non-U.S. adviser is not registered with the SEC, the SEC maintains the ability effectively to police its activities to ensure that U.S. clients are not being harmed.

We would be happy to discuss the foregoing if it might be helpful.

Best regards,

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