



MFS Investment Management
500 Boylston Street, Boston, MA 02116-3741
617.954.5000 mfs.com

Mark N. Polebaum
Executive Vice President - General Counsel
(617) 954-5747
mpolebaum@mfs.com

January 24, 2011

Elizabeth M. Murphy, Esq.
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers (Release No. IA-3111; File No. S7-37-10)

Dear Ms. Murphy:

MFS Investment Management ("MFS") appreciates the opportunity to express its views on the Securities and Exchange Commission's recently proposed rules that would implement new exemptions from the registration requirements of the Investment Advisers Act of 1940, as amended ("Advisers Act") for advisers to certain privately offered investment funds that were enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").¹ Among other things, the proposed rules would clarify the meaning of certain terms included in a new exemption for foreign private advisers.

The Dodd-Frank Act repealed Section 203(b)(3) of the Advisers Act, which exempted any investment adviser from registration if the investment adviser (i) had fewer than 15 clients in the preceding 12 months, (ii) did not hold itself out to the public as an investment adviser and (iii) did not act as an investment adviser to a registered investment company or a company that has elected to be a business development company ("Repealed Exemption"). The Dodd-Frank Act replaced the Repealed Exemption with three more narrowly-tailored exemptions from registration under the Advisers Act. The exemptions apply to: (i) advisers solely to venture capital funds, without regard to the number of such funds advised by the adviser or the size of such funds; (ii) advisers solely to private funds with less than \$150 million in assets under management in the United States ("U.S."), without regard to the number or type of private funds advised; and (iii) non-U.S. advisers with less than \$25 million in aggregate assets under management from U.S. clients and private fund investors and fewer than 15 such clients and investors ("Foreign Adviser Exemption"). This letter only addresses the Foreign Adviser Exemption and its impact on existing Commission staff no-action positions.

By way of background, MFS is an indirect subsidiary of Sun Life Financial Inc., a leading international financial services organization providing a diverse range of products and services to individuals and corporate customers. Sun Life Financial Inc.'s worldwide corporate headquarters are located in Toronto, Ontario, Canada. MFS itself is an investment adviser registered with the Commission under the Advisers Act. MFS serves as an investment adviser to each of the funds included within the MFS Family of Funds, to various other open-end and closed-end registered investment companies, to various offshore funds and to private institutional accounts. MFS Institutional Advisors, Inc. ("MFSI"), a direct wholly-owned subsidiary

¹ Investment Advisers Act Release No. 3111 (Nov. 19, 2010); 75 Fed. Reg. 77190 (Dec. 10, 2010) ("*Proposing Release*").

of MFS, also is an investment adviser registered with the Commission under the Advisers Act. MFSI's clients are principally institutional investors, including U.S. and offshore investment companies, pension and profit sharing plans, trusts and estates, charitable organizations, corporations, domestic and foreign government entities, universities, unions, and private funds. In addition, MFSI provides investment advice to high-net-worth individuals. The MFS organization currently manages approximately \$222 billion on behalf of over six million investors worldwide.

In addition to MFS and MFSI, the MFS organization includes non-U.S. investment advisers that are not registered under the Advisers Act ("Participating Affiliates"). MFS and MFSI may, from time to time, utilize advice or research provided to them by Participating Affiliates, pursuant to a written memorandum of understanding by and among MFS, MFSI and the Participating Affiliates (the "MOU"). Under the MOU, certain employees of each Participating Affiliate serve as associated persons of MFS and MFSI ("Participating Employees"). These arrangements have been structured in reliance on past Commission staff no-action positions, articulated in the *Royal Bank of Canada*, *Unibanco* and other no-action letters (collectively, the *Unibanco Letters*).²

The *Proposing Release* notes that after Dodd-Frank was enacted, the Commission received several letters requesting interpretative guidance on whether and to what extent the *Unibanco Letters* would continue to apply in light of the Foreign Adviser Exemption included in Dodd-Frank.³ The Commission declined to issue any guidance in the *Proposing Release*, instead noting that:

We acknowledge that such determinations will depend on the particular facts and circumstances of non-U.S. advisers. Advisers should consider whether they may avail themselves of either the foreign private adviser exemption or the private fund adviser exemption as proposed in this Release, and are encouraged to submit comment letters addressing with particularity and specificity interpretative issues that may not be addressed in our proposed rules.⁴

MFS believes that its Participating Affiliates do not qualify for either the Foreign Adviser Exemption or the private fund adviser exemption because the amount of assets managed by MFS' Participating Affiliates exceeds the thresholds specified in Dodd-Frank. We believe that the Commission should reaffirm the continuing vitality of the *Unibanco Letters*. The *Unibanco Letters* were based on Section 203(a) of the Advisers Act, rather than the Repealed Exemption. Therefore, we do not believe that Dodd-Frank has had any impact upon the *Unibanco Letters*. Furthermore, we note that unlike the case of investment advisers who relied upon the Repealed Exemption, the Commission has the necessary means to monitor the activities of Participating Affiliates and Participating Employees with respect to MFS and MFSI's U.S. clients, and can police any conduct that may harm U.S. persons or markets. If the Commission continues to allow investment advisers to rely upon the *Unibanco Letters*, the Commission will continue to have access to trading and other

² See, e.g., *Royal Bank of Canada* (pub. avail. June 3, 1998) ("*Royal Bank of Canada*"); *Murray Johnstone Holdings Limited* (pub. avail. Oct. 7, 1994); *Kleinwort Benson Investment Management Limited* (pub. avail. Dec. 15, 1993); *Mercury Asset Management plc* (pub. avail. Apr. 16, 1993); *The National Mutual Group* (pub. avail. Mar. 8, 1993); and *Uniao de Bancos de Brasileiros S.A.* (pub. avail. July 28, 1992) ("*Unibanco*").

³ *Proposing Release*, *supra* note 1, 75 Fed. Reg. at 77214 n. 271.

⁴ *Proposing Release*, *supra* note 1, 75 Fed. Reg. at 77214 n. 271. The *Proposing Release* solicits comment on whether the Commission should adopt a rule specifying that neither the private fund adviser exemption nor the Foreign Adviser Exemption is available to an affiliate of a registered investment adviser. *Proposing Release*, *supra* note 1, 75 Fed. Reg. at 77214 (text accompanying note 271). We note that if such a rule were to be adopted, then no affiliate of a registered investment adviser that currently relies upon the *Unibanco Letters* would be able to avail itself of the private fund adviser exemption or the Foreign Adviser Exemption.

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records of affiliates involved in, or having access to, U.S. advisory activities, and to the affiliates' personnel, to the extent necessary to monitor and police conduct that may harm U.S. clients or markets.

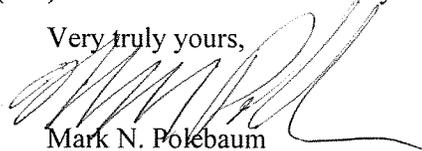
By contrast, if the MFS organization and other similarly situated advisers are required to register offshore investment advisers that currently rely upon the *Unibanco* Letters, we believe that there will be added costs and burdens imposed upon these advisers without any corresponding increase in the Commission's ability to monitor and police conduct that may harm U.S. clients or markets. Furthermore, we believe that such a result would be inconsistent with the intent of Dodd-Frank to limit the number of investment advisers registered with the Commission to better enable the Commission to focus its resources on those investment advisers that have a more nationwide scope.⁵

For these reasons, we urge the Commission to explicitly affirm the continued vitality of the *Unibanco* Letters.

* * * * *

We appreciate the Commission's consideration of our comments. If you have any questions or need additional information, please contact me at (617) 954-5747 or Ethan D. Corey at (617) 954-6748.

Very truly yours,



Mark N. Polebaum
General Counsel

⁵ We assume that, consistent with the position taken by the Commission staff in *ABA Subcommittee on Private Investment Companies* (pub. avail. Aug. 10, 2006), the Commission is of the view that the substantive provisions of the Advisers Act do not apply to offshore advisers with respect to such advisers' dealings with offshore clients to the extent described in prior staff no-action letters. *Proposing Release, supra* note 1, 75 Fed. Reg. at 77205 n. 172.