

August 11, 2004

Mr. Jonathan Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0609

Re: File No: S7-30-04

Comments on Proposed Rule Changes – Registration Under the Advisers Act of Certain Hedge Fund Advisers

Dear Mr. Katz:

The author of this submission is a lawyer with the firm of Freshfields Bruckhaus Deringer, London, England. This letter represents the personal views of the author and not necessarily those of Freshfields Bruckhaus Deringer or any of its clients.

This letter is not intended as commentary on the merits or demerits of the proposal that certain U.S. and offshore hedge fund advisers be required to register with the Securities and Exchange Commission as investment advisers pursuant to the Investment Advisers Act of 1940.

Instead, the author requests that the Commission gives further consideration to expanding its observations contained in the proposing release regarding which of the substantive provisions of the Advisers Act would, and would not, apply to advisers to offshore hedge funds that would be required to register pursuant to the Act.

Proposed rule 203(b)(3)-2(c) would permit an offshore adviser to an offshore fund to treat the fund as its client (except in respect of determining the availability of the private adviser exemption and the Adviser Act's anti-fraud provisions). The proposing release notes that, therefore, as the fund would not be a U.S. client of the offshore adviser, most of the substantive provisions of the Advisers Act would not apply to the offshore adviser's dealings with the fund. As noted in footnotes 131 and 134 to the proposing release, this is on the basis of the policy first set out in the *Uniao de Banco de Brasileiros S.A.* no-action letter dated July 28, 1992, which policy has been developed in subsequent no-action positions.

Particularly in light of the probable increase in offshore adviser registrations as a result of implementation of the proposed rule changes, the author believes that it would be very helpful for offshore advisers if the Commission could specifically confirm (and, where necessary, clarify) which and to what extent the substantive provisions of the Advisers Act apply, or do not apply, to registered offshore advisers as regards their offshore clients. For example, would the recently adopted rules requiring a registered adviser to adopt compliance procedures, designate a chief compliance officer and to adopt a code of ethics for its personnel apply to offshore

advisers to offshore private funds? If so, would those rules apply in full or would any special provision be made for offshore advisers to offshore private funds?

The author appreciates the opportunity to comment in relation to the proposed rule changes. Please contact the undersigned with any questions regarding this submission.

Yours truly

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