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ELI WHITNEY DEBEVOISE
1899-1890

FRANCIS T.P. PLIMPTON
1800-1883

HAROLD H. HEALY, JR.
RICHARD D. KAHN
GEORGE N. LINDSAY
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OF COUNSEL

*NOT ADMITTED IN NEW YORK

July 13, 1992

VIA HAND DELIVERY

Thomas S. Harman, Esq.
Associate Director and Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Unibanco - Uniao de Bancos de Brasileiros S.A.:
Investment Advisory Activities

Dear Mr. Harman:

In connection with your request for clarification of certain matters pertaining to our May 11, 1992 letter, we submit this supplemental letter on behalf of our client Unibanco - Uniao de Bancos de Brasileiros S.A. ("Unibanco") and its investment adviser subsidiary, Unibanco Consultoria de Investimentos S/C Ltda. ("UC").

Our client has confirmed that, apart from UC, no affiliated persons of Unibanco are engaged in the investment management business. In addition, as we discussed, all Unibanco employees involved in UC's United States advisory activities, including research analysts and other employees of Unibanco whose functions or duties relate to the determination of recommendations that UC makes to its United States clients, shall be deemed to be "associated persons" of UC.


Thomas S. Harman, Esq.

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July 13, 1992

We appreciate the time and attention that the staff has given to our request. Please feel free to contact us if you have any further questions.

Very truly yours,


Marcia L. MacHarg

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OF COUNSEL

Act IAA-40
Section 203(a)
Title _____
Public _____
Availability 7/28/92 Investment Advisers Act of 1940
Sections 203 and 208

*NOT ADMITTED IN NEW YORK

May 11, 1992

Thomas S. Harman, Esq.
Associate Director and Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Unibanco - Uniao de Bancos de Brasileiros S.A.:
Investment Advisory Activities

Dear Mr. Harman:

We are writing on behalf of our client, Unibanco - Uniao de Bancos de Brasileiros S.A. ("Unibanco" or the "Bank"), one of Brazil's largest banking organizations, to request your concurrence with our opinion that Unibanco is not required to register under the Investment Advisers Act of 1940, as amended (the "Advisers Act") if its wholly-owned Brazilian investment adviser subsidiary, Unibanco Consultoria de Investimentos S/C Ltda. ("UC"), an investment adviser which has registered on Form ADV under the Advisers Act, provides investment advisory services to U.S. institutional clients under the circumstances described below. In addition, we seek assurance from the

staff of the Securities and Exchange Commission (the "SEC") that it will not recommend enforcement action against Unibanco, UC or any of their affiliates if UC provides investment advisory services to its non-U.S. advisory clients solely in accordance with the requirements of the securities laws of Brazil (or other applicable foreign law) without also applying the provisions of the Advisers Act to such non-U.S. advisory activities, except as otherwise described below.

DESCRIPTION OF UNIBANCO AND UC

Unibanco

Unibanco, founded in 1924, is the third largest nongovernmental banking organization in Brazil. Unibanco has a 400-branch network in Brazil, as well as branches or representative offices in New York, London and the Cayman Islands. Unibanco's common shares are listed on the Sao Paulo Stock Exchange and on the Rio de Janeiro Stock Exchange, and it has over 200,000 registered shareholders, including the following major international banking organizations: The Dai-Ichi Kangyo Bank Ltd. of Japan (11.72%); Germany's Commerzbank AG (10.17%); and Security Pacific National Bank (2.63%). Unibanco is effectively controlled by the Moreira Salles family, the members of which indirectly hold a controlling block of the stock of Unibanco.

In the field of asset management, Unibanco is one of the most experienced and well-established investment managers in Brazil. It offers its Brazilian clients a wide range of investment vehicles, including stock and fixed-income funds, pension funds, foreign investment funds, debt conversion funds, individual portfolios and specialized savings vehicles termed "investment clubs." At year-end 1990, Unibanco's assets under management totalled Cr\$57.3 billion. Unibanco manages the oldest stock market fund in Brazil and was a pioneer in introducing foreign investment funds in 1975. As discussed in further detail below, Unibanco is regulated by the Central Bank of Brazil and is registered as an investment manager with the Comissao de Valores

Mobiliarios (the "CVM"). Unibanco does not currently provide advisory services to U.S. clients and will not solicit U.S. advisory clients in the future.

In 1989, in accordance with a resolution adopted by the Central Bank of Brazil, Unibanco became a multiple service (or universal) bank by incorporating into Unibanco the noncommercial banking businesses of previously separate affiliates. Accordingly, Unibanco now operates in the investment management, commercial banking, investment banking, real estate financing and consumer credit sectors. As a multiple service bank with integrated services, Unibanco seeks to offer the highest quality customer services, devoted to the specialized needs of its customers on a global basis.

Unibanco will continue to provide a wide range of discretionary (and, in limited instances, nondiscretionary) investment management services to non-U.S. clients. Unibanco employs approximately 45 analysts on its research staff, which provides investment research and analysis with respect to economic factors and trends in Brazil, Brazilian securities and other investments. The research staff does not issue buy, sell or hold recommendations; it concentrates solely on data analysis and reporting. Unibanco has established a separate investment management group, which provides discretionary portfolio management services to the Bank's clients. The investment management group presently consists of five portfolio managers.

The Bank has a committee (the "Investment Committee") currently comprised of 13 individuals who are either members of the Bank's Board of Directors or senior managers, including the president of Unibanco, the executive directors of the Bank's corporate finance, trust management and international divisions, and the directors responsible for corporate finance, research and Brazilian fund management. The Investment Committee, which is not formally constituted, meets on a weekly basis to discuss matters relating to overall investment strategy with respect to the management of assets for client accounts as well as for the Bank's own account. Based generally on information provided by the Bank's research staff and on

the expertise of the Bank's senior managers, the Investment Committee sets general investment policies and guidelines based on macroeconomic analyses as well as interest rate and stock market trends. The Investment Committee does not discuss individual securities, portfolio companies, or portfolio performance and makes no recommendations as to specific securities. These functions are entrusted solely to the Bank's portfolio managers, who make investment decisions as to specific securities based on the investment objectives and needs of each particular client, consistent with the general economic policies set by the Investment Committee. Deviation from the Investment Committee's general policies is permitted on a case-by-case basis.

UC

Consistent with its mission to provide a full range of financial services to Brazilian and non-Brazilian clients, Unibanco has organized UC, a wholly-owned subsidiary formed as a limited liability corporation under Brazilian law, to provide nondiscretionary investment management services to U.S. institutional clients, including a registered investment company, The Brazilian Investment Fund, Inc.¹ UC serves as the Brazilian investment portfolio and economic adviser to that registered fund pursuant to a Brazilian Advisory Agreement containing terms and conditions required pursuant to Section 15 of the Investment Company Act of 1940, as amended. UC believes that it will provide a new and unique service that is tailored specifically to non-Brazilian clients seeking nondiscretionary advice with respect to statistical matters and general economic and investment trends in Brazil, as well as specific information about particular Brazilian companies. UC expects that its nondiscretionary advisory services will be utilized primarily by U.S. investment advisers with

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1. Under its Articles of Association, UC is presently authorized to provide only nondiscretionary investment advice. In the future, UC may register with the CVM to provide discretionary advisory services as well.

discretionary responsibility for institutional client portfolios.²

Before discussing the composition of UC's management and Board of Directors, it may be helpful to place these corporate organs in the context of Brazilian company or corporation law.³ Under Brazilian company law, the management of a company is entrusted to its Conselho Administrativo (corresponding to a Board of Directors) and its Diretoria (Managing Directors), or, in certain cases, only to its Managing Directors. A company such as UC, which is a wholly-owned subsidiary, is not required to have a Board of Directors; the management of such a company may be entrusted exclusively to its Managing Directors. Nonetheless, as discussed below, UC has a Board of Directors with full power and authority to manage its business. The Board of Directors of a Brazilian company is a collegial, deliberative body, similar in concept to the Board of Directors of an American company.⁴

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2. UC does not contemplate providing investment advisory services to natural persons who reside in the U.S. In the future, UC may seek to expand its services to non-U.S. clients, including Brazilian institutions and high net worth individuals.
 3. Within Unibanco, officer-level titles held by members of the executive management staff, in descending order of responsibility, are as follows: Executive Vice President, Senior Vice President, Managing Director, Executive Director, Director, Sector Director and Deputy Director. Persons without an executive title are generally referred to as employees.
 4. The Board of Directors has reserved to it by law the following basic supervisory powers over a company's business:
 - establishing general policies with regard to company business;

(continued...)

Managing Directors, by contrast, are executive officers, each of whom has the power to bind the company in the normal course of its business.

4. (...continued)

- electing and discharging Managing Directors and establishing their powers and duties pursuant to pertinent provisions in the corporate by-laws;
- supervising the activities of the Managing Directors of the company, examining the books and papers of the company at any time and requesting information on contracts which have been signed or are about to be signed, and doing all other necessary acts;
- calling a general meeting of shareholders whenever deemed necessary;
- giving its opinion on reports made by Managing Directors and on accounts rendered by the Managing Directors;
- giving a prior opinion on any act or contract whenever required to be authorized by the by-laws;
- deciding whether to issue shares of the company whenever authorized by the by-laws;
- unless not permitted by the by-laws, authorizing the transfer of property which is part of the fixed assets of the company, creating mortgages and providing guarantees of obligations of third parties; and
- selecting and discharging independent auditors, if any.

UC's Management Structure

None of the members of UC's Board of Directors and none of its Managing Directors is a U.S. citizen or resident. Initially, UC's Managing Directors will be Mr. Cesar Augusto Sizenando, Mr. Sergio Zappa and Mr. Walter Mendes.⁵ Mr. Sizenando has been with the Bank since 1976. The Bank's Board of Directors elected Mr. Sizenando to serve as the Bank's Executive Vice President. As a senior officer of the Bank, Mr. Sizenando has ultimate supervisory responsibility for the management, development, and operational aspects of Unibanco's wholesale financial products; Unibanco's funding and lending operations; investment management with respect to third-party accounts and Unibanco's own account; treasury and exchange operations; and brokerage. Five directors and managers, with supervisory authority over more than 100 employees, report directly to Mr. Sizenando, who meets with each of them periodically (approximately once a week).⁶ Mr. Sizenando serves on the Investment Committee of Unibanco. He performs no portfolio management functions and is simply not involved in the day-to-day research or investment management activities of the Bank except to set broad policy direction and, as an Executive Vice President, to set objectives and to review the performance of those reporting to him. Mr. Sizenando does not make investment recommendations or decisions for the Bank's own account or for accounts belonging to clients of the Bank, and is not informed of such recommendations or decisions before they are communicated to clients. At UC, Mr. Sizenando will

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5. Although UC currently has no other officers or employees, in the future, as its business expands, it anticipates that it will be in a position to add additional Unibanco personnel as well as persons who are not associated with Unibanco.
 6. Messrs. Farath, Dania, Brasil and Mendes and Ms. Camargo. These five individuals each have the authority to hire and dismiss employees under their own supervision, but, as a practical matter, would consult with Mr. Sizenando before doing so.

have similar general oversight responsibility for the activities of Messrs. Zappa and Mendes. He will not be involved in the day-to-day operations of UC.

Mr. Zappa joined Unibanco in 1988 and is currently Director of its Corporate Finance Group, which engages in securities underwriting and dealing activities and is responsible for international business development. While Mr. Zappa is also a member of Unibanco's Investment Committee, he is not involved in the day-to-day investment management business of Unibanco and has no portfolio management responsibilities. At UC, Mr. Zappa will be responsible for marketing UC's services; in particular, he will develop and maintain relations with non-Brazilian clients.

Mr. Mendes, who has been an employee of Unibanco since 1978, serves as the Manager of Unibanco's research staff for Brazilian equity securities. He is a member of Unibanco's Investment Committee. Mr. Mendes supervises 25 analysts engaged in industry and company research. He and his staff perform fundamental analysis and prepare research reports on approximately 240 companies in 100 industry sectors. As noted above, the research staff does not make investment recommendations. Mr. Mendes has no portfolio management responsibilities for any Bank customer accounts or for the Bank's proprietary account.⁷ At UC, Mr. Mendes will be responsible for furnishing advice to UC's clients. In this regard, he will make specific investment recommendations to clients of UC based on research conducted by Unibanco's research department as well as research obtained from other sources.

Unibanco has in place "Chinese Walls" which insulate Unibanco's portfolio managers from other operations of the Bank. Specifically, Mr. Mendes and his research staff are located on a separate floor from the

7. Unibanco's proprietary account is managed by Mr. Walter Brasil and his staff. Accounts belonging to clients of Unibanco are managed by Mr. Flavia Dania and his staff. Neither Mr. Brasil nor Mr. Dania will serve any role with UC.

Bank's portfolio management operations, and the Bank's policies prohibit its portfolio managers from discussing their prospective investment recommendations or decisions with members of the research staff.⁸ In addition, Mr. Mendes will be prohibited under the Bank's policies from discussing recommendations he makes to UC's clients with any other member of the research staff or any Unibanco portfolio manager until such recommendations are effectively disseminated to clients.

Mr. Zappa and Mr. Mendes will be responsible for the day-to-day activities of UC and will devote such time as is required or necessary to carry out their responsibilities at, and conduct the business of, UC. Messrs. Sizenando, Zappa and Mendes will continue to serve in their positions at Unibanco described above.

UC will have a Board of Directors initially consisting of three members: Mr. Josephino Alderico Benvenutti, Mr. Norberto Fassina and Mr. Mauro Agonilha. Mr. Benvenutti is a self-employed independent accountant who received his degree in Economical Science. Apart from serving as a director of UC, he is not, and will not in the future be, associated with Unibanco or any Unibanco affiliate. Mr. Fassina is the managing director of Brasil Warrant Adm. de Bens e Emprs. Ltda. ("Brasil Warrant"), a nonoperating holding company owned by the Moreira Salles family. Neither Brasil Warrant nor its subsidiaries are involved in the banking or investment management business. Mr. Agonilha is an Executive Director of Caminho Editorial S/A, a publishing company owned by Brasil Warrant. Caminho Editorial is not involved in the banking or investment management business and does not publish financial periodicals.

None of the members of the Board of Directors of UC is a member of the Board of Directors of Unibanco or is in any way involved in the operations of Unibanco, including its investment management business. In addition,

8. In addition, Mr. Brasil and his staff are prohibited from discussing investment strategies and decisions with Mr. Dania and his staff, and vice versa.

Brazilian law prohibits Brasil Warrant and Caminho Editorial from borrowing from Unibanco or its subsidiaries.

Messrs. Benvenuto, Fassina and Agonilha will provide a layer of independent supervision between UC and Unibanco in the exercise of the ordinary management and oversight role of a Board of Directors of a Brazilian company. In addition to the basic powers described above in Note 4, UC's Articles of Association provide that the Board of Directors shall have the exclusive responsibility to supervise the activities of UC's Managing Directors, to establish UC's basic objectives and goals and to oversee its business operations. The Board of Directors will meet quarterly to review the operations of UC and its financial performance. The members of the Board of Directors will not participate in the formulation of investment advice.

UC will be solely responsible for the conduct of its investment advisory business. UC will have the power and authority to make its own recommendations and will not be bound or restricted by the policies set by Unibanco's Investment Committee. Its investment advice and recommendations will be based upon the investment policies developed primarily by Mr. Mendes.

Messrs. Mendes, Sizenando and Zappa will keep the investment advice and recommendations of UC confidential and will not disclose them to any other member of Unibanco's Investment Committee, the investment management group or the research staff until effectively disseminated to UC's clients.⁹ In particular, Mr. Mendes, who will be primarily responsible for formulating specific investment advice for UC's clients based on research provided by, among others, Unibanco's research staff, will not discuss his recommendations with any Unibanco personnel (for this

9. In fact, Messrs. Sizenando and Zappa will not be involved in formulating or communicating investment advice about specific investments to UC's clients, and, therefore, as a practical matter, simply will not be aware of the specific recommendations to be provided to such clients by Mr. Mendes.

purpose, Mr. Sizenando and Mr. Zappa are considered UC personnel) until such recommendations have been effectively disseminated to clients. None of Mr. Sizenando, Mr. Zappa or Mr. Mendes will manage any advisory portfolios for Unibanco or its clients.

In addition, it will be clear in communications with UC's clients that such communications are from UC, not Unibanco. When dealing with clients or potential clients, UC personnel will also make it clear that they are acting in their capacity as representatives of UC, not Unibanco. Further, UC will disclose to its clients that Unibanco and customers of Unibanco may also trade in securities that are the subject of recommendations to UC's clients.

UC will contract, on an arm's-length basis, with Unibanco for investment research. The terms of the contract will be negotiated by the Boards of Directors of UC and Unibanco and will contain compensation arrangements that, in the judgment of such Boards of Directors, are fair and reasonable to both parties. It is expected that UC will initially obtain most of its research from Unibanco, although it will contract with other research providers for research that is not available from Unibanco.¹⁰

Unibanco made an initial capital contribution to UC of approximately \$50,000 (U.S.). As a nondiscretionary investment adviser formed under the laws of Brazil, UC is adequately capitalized to conduct its business. UC's offices are located on the same premises as Unibanco. UC

10. In this regard, we note that, in Brazil, a registered investment manager is required to have personnel that specialize in investment research and securities analysis. A company may satisfy this requirement by entering into an agreement with a registered entity to use that entity's technical knowledge, expertise and services with respect to investment research and analysis. It is accepted practice in Brazil for an adviser, such as UC, to obtain its investment research from other sources.

will have neither an office nor personnel in the U.S. Further, UC will not have custody or possession of client funds or securities.

Designation of Agent

In connection with its request for no-action assurance, Unibanco agrees to designate and appoint Debevoise & Plimpton as agent for service ("Agent"), at 555 13th Street, N.W., Washington, D.C. 20004. The Agent is authorized to accept the service of administrative subpoenas from the SEC ("Administrative Subpoenas") for the production of documents and testimony from Unibanco and for the production of persons, as described below. Moreover, the Agent will be authorized to receive any notice, pleading, summons, or other process in any action or other proceeding, or a subpoena related thereto, arising out of or relating to any investment advisory service of UC ("Subject Investment Advisory Service") or related securities transaction.

Unibanco will also appoint a successor Agent for service if Unibanco discharges the Agent or if the Agent is unwilling or unable to accept service on behalf of Unibanco at any time until six years have elapsed from the date of Unibanco or UC's last investment advisory service or the date the last related securities transaction is effected pursuant to this letter. Unibanco further undertakes to advise the SEC promptly of any change to the Agent's name or address during the same time period.

Books and Records

The books and records of UC will be kept in English separately from Unibanco's books and records, and all of UC's books and records will be kept and maintained in accordance with the Advisers Act. Such records will clearly reflect the investment advice given to UC's clients. UC undertakes that all books and records maintained by it will be made available to the SEC for inspection.

In addition, Unibanco undertakes that it will cause UC to make and keep true, accurate and current books

and records relating to the Subject Investment Advisory Services in accordance with the Advisers Act and Brazilian law. Furthermore, Unibanco will make and keep true, accurate and current books and records relating to any related securities transactions in accordance with Brazilian law and such books and records of related securities transactions will include books and records of the type described in subparagraphs 1, 2, 3, 6, 7, 8, 9, 10 and 13 of Rule 204-2(a) of the Advisers Act. All of the above-described records will be maintained and preserved by UC or Unibanco in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record. Unibanco and employees and persons under the control of Unibanco (collectively, "Employees") will produce promptly, or cause UC to produce promptly, to the SEC upon receipt of a request for production, including without limitation an Administrative Subpoena, any and all such books and records, at such place as the SEC may designate in the U.S. or, at its option, in Brazil at the offices of Unibanco or UC.

Production of Personnel and Documents

With the exception of clerical and ministerial personnel, Unibanco undertakes to produce for testimony pursuant to an Administrative Subpoena or a request for voluntary cooperation all Employees who are identified by the SEC, its staff, Unibanco, or UC as being involved in the Subject Investment Advisory Services or related securities transactions.

Except with respect to the identity of customers of Unibanco, Unibanco will authorize an Employee identified in an Administrative Subpoena or pursuant to a request for voluntary cooperation to testify about all Subject Investment Advisory Services and related securities transactions in which the Employee has experience or knowledge. If Unibanco agrees, any Employee identified in an Administrative Subpoena or appearing pursuant to a request for voluntary cooperation may testify about the identity of customers of Unibanco.

Unibanco also agrees that it will produce, pursuant to an Administrative Subpoena or a request for voluntary cooperation, any documents, including without limitation books and records as set forth above, relating to the Subject Investment Advisory Services or related securities transactions.

Except with respect to the identities of customers of Unibanco, Unibanco represents and agrees that it will not in any way contest the validity of an Administrative Subpoena for testimony or documents, nor will it contest the appearance of its Employees for testimony, under any laws or regulations other than those of the United States.

Unibanco undertakes to report to the staff of the SEC changes in Brazilian law that would prevent Unibanco from performing the undertakings in this letter and Unibanco understands that, with respect to any such change in Brazilian law, the staff of the SEC reserves the right to withdraw this letter if, after discussion, Unibanco and the staff are unable to agree upon a satisfactory modification of the terms of the letter.

BRAZILIAN REGULATION OF UNIBANCO AND UC

As a universal bank in Brazil, Unibanco is highly regulated by the Brazilian Central Bank. Among other things, Unibanco is required to meet certain capitalization, liquidity, and reserve requirements and is subject to limitations on foreign exchange exposure and credit exposure. Further, its Managing Directors must meet prescribed standards of education and experience.

In addition, Unibanco is registered with the CVM as an investment manager. Investment managers in Brazil are professional portfolio managers with discretionary power to purchase and sell securities for their clients' accounts. As an investment manager, Unibanco is subject to a comprehensive system of regulation similar to that provided under the Advisers Act. Individuals providing discretionary advice must also register with the CVM. Among other things, individuals must have certain

professional qualifications, including at least three to five years of relevant professional experience and a graduate degree from a recognized institution or a non-graduate degree in financial markets.

Under Brazilian law, an investment manager is required, among other things, to keep adequate records and give the CVM access to all documentation related to investment transactions; comply with regulations concerning custody of client assets; provide periodic reports to its clients; comply with restrictions against principal transactions with clients; and comply with restrictions on advertising. Unibanco is also subject to inspection and audit by the CVM.

The CVM has not adopted regulations requiring an investment adviser, such as UC, that does not have investment discretion over client assets to register with the CVM. The CVM has confirmed to representatives of UC that it is not presently required to register. However, the CVM has broad regulatory authority over, among other things, (1) all activities involving the issuance and distribution of securities; (2) securities brokers and dealers; (3) the stock exchanges and markets; (4) the custody and management of securities portfolios; (5) companies, such as Unibanco, the shares of which are publicly traded; and (6) investment advisory activities. The CVM exercises this regulatory authority by issuing rules and regulations, requiring the registration of certain securities and entities, supervising, inspecting, and auditing persons engaged in the securities business, and investigating and penalizing persons and entities that violate the securities laws. The CVM has jurisdiction over all Brazilian territory.

Although the CVM has not issued specific rules or regulations regarding nondiscretionary advisers such as UC, it is our understanding that the CVM could exercise its regulatory authority over UC if UC's conduct involved any of the above-described areas or activities. For example, if UC were to provide advice with the intention of manipulating the Brazilian stock markets, the CVM would have authority to bring an enforcement action against UC. Moreover, each of the Managing Directors of UC is reg-

istered with the CVM, which has jurisdiction over them in their capacities as Managing Directors or Directors of Unibanco.

In addition, as you are aware, the SEC entered into a Memorandum of Understanding ("MOU") with the CVM in July 1988 providing for mutual cooperation in matters relating to U.S. and Brazilian securities laws. The scope of assistance called for is broad.

DISCUSSION

In the past, the staff of the Division of Investment Management has taken the position that a non-U.S. company need not register as an investment adviser provided that it establishes a registered subsidiary that meets certain criteria. See Richard Ellis (pub. avail. Sept. 17, 1981).¹¹ The staff has also taken the position

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11. Under Richard Ellis, a subsidiary will be regarded by the staff as having a separate, independent existence and to be functioning independently of its parent only if it:
- (1) is adequately capitalized;
 - (2) has a buffer, such as a board of directors a majority of whose members are independent of the parent, between the subsidiary's personnel and the parent;
 - (3) has employees, officers, and directors, who, if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent;
 - (4) itself makes the decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and has and uses sources of investment information not limited to
- (continued...)

in recent years that all registered investment advisers, both domestic and foreign, are subject to the relevant substantive provisions of the Advisers Act with respect to both U.S. and non-U.S. clients. See Investment Company Act Release No. 17534 (June 15, 1990) and Gim-Seong Seow (pub. avail. Nov. 30, 1987).

It is our view that Unibanco has created a workable approach that will enable it to serve clients efficiently and effectively, and will also provide the SEC staff with access to the investment advisory operations of UC and to relevant aspects of Unibanco's advisory business. Therefore, it is our opinion that UC is sufficiently separate and distinct from Unibanco to be registered under the Advisers Act and that, to the extent that all of the criteria established in Richard Ellis are not met, Unibanco need not register as an investment adviser under the circumstances described in this letter.

Extraterritorial Application of the Advisers Act

We also seek assurance from the staff that it will not recommend enforcement action against Unibanco, UC or any of their affiliates if UC provides investment advice to its non-U.S. clients solely in accordance with the requirements of applicable foreign law without also applying the provisions of the Advisers Act to such non-U.S. activities, except as otherwise discussed in this letter.

* * * * *

For the reasons set forth above, we respectfully request your concurrence with our opinion that Unibanco is not required to register under the Advisers Act if UC, as

11. (...continued)
its parent; and

- (5) keeps its investment advice confidential until communicated to its clients.

Thomas S. Harman, Esq.

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May 11, 1992

a registered investment adviser, provides investment advisory services to U.S. institutional clients under the circumstances described above. In addition, we seek assurance from the staff that it will not recommend enforcement action against Unibanco, UC or any of their affiliates if UC provides investment advisory services to its non-U.S. advisory clients solely in accordance with the requirements of the securities laws of Brazil (or other applicable foreign law) without also applying the provisions of the Advisers Act to such non-U.S. advisory activities, except as otherwise discussed in this letter.

Should you have any questions regarding this request, please do not hesitate to telephone me at (202) 383-8058 or Roberta R.W. Kameda at (202) 383-8047.

Very truly yours,


Marcia L. MacHarg



JUL 28 1992

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 92-273-CC
Uniao de Bancos de
Brasileiros S.A.
File No. 132-3

By letters dated May 11, and July 13, 1992, you request assurance that the staff would not recommend enforcement action to the Commission if, as more fully described in your letters, Uniao de Bancos de Brasileiros S.A. ("Unibanco") does not register under the Investment Advisers Act of 1940 (the "Advisers Act") notwithstanding the fact that its wholly owned subsidiary, Unibanco Consultoria de Investimentos S/C Ltda. ("UC"), a registered investment adviser, provides investment advisory services to United States clients. 1/ You also request assurance that the staff would not recommend enforcement action to the Commission if UC provides investment advisory services to non-United States clients solely in accordance with Brazilian securities laws (or other applicable foreign law) without also complying with the provisions of the Advisers Act, except as described in your letter.

Unibanco, the third largest non-governmental banking organization in Brazil, provides investment management, commercial banking, and investment banking services. Unibanco is regulated by the Central Bank of Brazil and is registered as an investment manager with the Comissao de Valores Mobiliarios (the "CVM"). Unibanco provides a wide range of discretionary and non-discretionary investment management services to non-United States clients. 2/ Apart from UC, no affiliated person of Unibanco is engaged in the investment management business.

UC, organized under Brazilian law, was formed to provide investment management services to United States clients, including the Brazilian Investment Fund Inc., a registered closed-end investment company. UC initially expects to obtain most of its research from Unibanco, although it will contract with other research providers for research that is not available from Unibanco. As a non-discretionary adviser, UC is not required to register with the CVM nor is it subject to regulation under Brazilian law. In the future, however, UC may register with the CVM to provide discretionary advisory services.

UC is a distinct legal entity with capital of approximately \$50,000. UC's offices are located on the same premises as

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- 1/ We interpret "United States client" to include, among others, any client that is a resident of the United States.
- 2/ You represent that Unibanco does not currently provide advisory services to United States clients and will not solicit United States advisory clients in the future.

Unibanco. UC is managed by its Conselho Administrativo ("Board of Directors") and its Diretoria ("Managing Directors"). 3/ All of UC's Managing Directors are employees of Unibanco. Mr. Caesar Augusto Sizenando is responsible for the oversight of UC and also has ultimate supervisory responsibility, among other things, for the management, development, and operation of Unibanco's investment management area both with respect to customer accounts and Unibanco's own account. Mr. Sergio Zappa is responsible for marketing UC's services and also is Director of Unibanco's Corporate Finance Group, which engages in securities underwriting. Mr. Walter Mendes makes specific investment recommendations to UC's clients and also serves as the Manager of Unibanco's research staff for Brazilian equity securities. All three Managing Directors are members of Unibanco's Investment Committee, which sets general investment policies and guidelines for Unibanco's investment management services on the basis of macroeconomic analyses as well as interest rate and stock market trends.

Section 203(a) of the Advisers Act requires any investment adviser that uses the United States mails or any other means or instrumentality of interstate commerce in connection with its business as an investment adviser to register with the Commission, unless the adviser is exempted from registration. The Division of Investment Management previously has taken the position that, once registered, domestic and foreign advisers are subject to all the substantive provisions of the Advisers Act with respect to both their United States and non-United States clients. 4/

As interest in investing outside of the United States has grown, so has interest in obtaining the advice of foreign investment managers. Foreign advisers may be reluctant to register with the Commission, however, because the Advisers Act may prohibit them from engaging in business practices with their foreign clients that are both legal and customary in their home countries. Further, non-United States clients would not expect the Advisers Act to govern their relationship with a non-United States adviser.

The Division has permitted a foreign adviser to avoid subjecting all of its operations to the Advisers Act by forming a separate and independent subsidiary to provide advice to United

3/ In Brazil, a Board of Directors is a collegial, deliberative body, similar in concept to a Board of Directors of an American company. Managing Directors, on the other hand, are executive officers, each of whom has the power to bind a company in the normal course of its business.

4/ See, e.g., Reavis & McGrath (pub. avail. Oct. 29, 1986).

States clients. Under the Division's position in Richard Ellis (pub. avail. Sept. 17, 1981), a subsidiary will be "regarded as having a separate, independent existence and to be functioning independently of its parent," thereby permitting the foreign parent to remain unregistered, only if the subsidiary: (1) is adequately capitalized; (2) has a buffer between the subsidiary's personnel and the parent, such as a board of directors a majority of whose members are independent of the parent; (3) has employees, officers and directors, who if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent; (4) makes the decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and has and uses sources of investment information not limited to its parent; and (5) keeps its investment advice confidential until communicated to its clients. 5/

While the Richard Ellis conditions have provided a framework that permits foreign advisers to offer advice to United States clients, many foreign advisers find it difficult to operate under these conditions. For example, foreign advisers often have been unwilling to dedicate their most senior personnel solely to a United States-registered subsidiary. United States clients therefore may find it difficult to gain access to the services of the adviser's most experienced employees.

The Division recently reexamined its interpretation of the reach of the Advisers Act and recommended that it be modified. 6/ The Division concluded that the policies and purposes of the Advisers Act, coupled with legal analyses that have been applied in other securities law contexts (i.e., the conduct and effects

5/ See also Investment Advisers Act Rel. No. 353 (Dec. 18, 1972) (proposing Rule 202-1 under the Advisers Act which set forth conditions substantially identical to Richard Ellis under which the Commission would consider a subsidiary company formed to provide advisory services to be an autonomous entity).

6/ SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, Chapter 5, The Reach of the Investment Advisers Act of 1940 (May 1992) ["Protecting Investors Report"].

tests), 7/ lead to the conclusion that a more flexible interpretation is appropriate.

Under the Division's approach, the substantive provisions of the Advisers Act generally would not apply with respect to a foreign registered adviser's non-United States clients. Foreign registered advisers, however, will be required to keep certain records and to provide the Commission access to foreign personnel with respect to all of their activities, since activities involving non-United States clients may have a significant effect on United States clients or markets. This will enable the Commission to monitor and enforce the adviser's performance of its obligations to its United States clients and to ensure the integrity of United States markets. 8/

Consistent with the conduct and effects approach, the Division also will allow non-United States advisers greater flexibility than permitted under Richard Ellis in organizing United States-registered subsidiaries. The Division will recognize separateness if the affiliated companies are separately organized (e.g., two distinct entities); the registered entity is staffed with personnel (whether physically located in the United States or abroad) who are capable of providing investment advice; all persons involved in United States advisory activities are

7/ Under a conduct test, conduct that takes place in the United States, wholly or in substantial part, would be sufficient to justify application of the securities laws. See, e.g., Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d 1326 (2d Cir. 1972); Continental Grain (Australia) Pty. Ltd. v. Pacific Oilseeds, Inc., 592 F.2d 409, 421 (8th Cir. 1979) (misrepresentations made in the United States for securities transactions consummated abroad). Under an effects test, the securities laws would be applied to conduct outside the territory of the United States that has or is intended to have substantial effects within the United States. See, e.g., Consolidated Gold Fields, PLC v. Minorco, S.A., 871 F.2d 252 (2d Cir. 1989); Bersch v. Drexel Firestone, 519 F.2d 974, 993 (2d Cir.), cert. denied, 423 U.S. 1018 (1975); Schoenbaum v. Firstbrook, 405 F.2d 200 (2d Cir.), rev'd on other grounds, 405 F.2d 215 (2d Cir. 1968) (en banc), cert. denied, 395 U.S. 906 (1969).

8/ For example, the Commission wants to ensure that non-resident and United States clients pay the same price when a foreign adviser purchases securities on their behalf at the same time.

deemed "associated persons" of the registrant; 9/ and the Commission has adequate access to trading and other records of each affiliate involved in United States advisory activities, and to its personnel, to the extent necessary to monitor and police conduct that may harm United States clients or markets. 10/

On the basis of the facts and representations in your letters, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission if Unibanco does not register under the Advisers Act, notwithstanding the fact that UC provides investment advisory services to United States clients. We further would not recommend enforcement action to the Commission if UC provides investment advisory services to its non-United States clients solely in accordance with Brazilian securities laws (or other applicable law) without complying with the provisions of the Advisers Act with respect to its non-United States advisory activities, except as specifically noted. Our position is based, in particular, on the undertakings in your letters, which because of their significance, are set forth below:

1. Designation of Agent

Unibanco agrees to designate and appoint Debevoise & Plimpton as its agent for service ("Agent"), at 555 13th Street, N.W., Washington, D.C. 20004. 11/ The Agent is authorized to

9/ Under Section 202(a)(17) of the Advisers Act, persons associated with an investment adviser include "any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser . . . [but not] persons . . . whose functions are clerical or ministerial" The Advisers Act imposes certain obligations on a registered investment adviser with respect to its associated persons. See, e.g., Sections 203(e)(5) and 204A.

10/ Protecting Investors Report, supra, note 6 at 233-34 (e.g., front running and unauthorized principal and agency cross transactions). See also Section 201 of the Advisers Act (finding that investment advisory relationships negotiated and performed by the use of the mails and means and instrumentalities of interstate commerce are of national concern).

11/ Rule 0-2 under the Advisers Act requires UC, as a non-resident entity, to have designated an agent for service of process for itself on Form 5-R at the time it registered with the Commission.

accept the service of administrative subpoenas from the SEC ("Administrative Subpoenas") for the production of documents and testimony from Unibanco and for the production of persons, as described below. Moreover, the Agent will be authorized to receive any notice, pleading, summons, or other process in any action or other proceeding, or a subpoena related thereto, arising out of or relating to any investment advisory service of UC ("Subject Investment Advisory Service") or any related securities transaction. 12/

Unibanco also will appoint a successor Agent for service if Unibanco discharges the Agent or if the Agent is unwilling or unable to accept service on behalf of Unibanco at any time until six years have elapsed from the date of Unibanco or UC's last investment advisory service or the date the last related securities transaction is effected pursuant to this letter. Unibanco further undertakes to advise the SEC promptly of any change to the Agent's name or address during the same time period.

2. Books and Records

The books and records of UC will be kept in English separately from Unibanco's books and records, and all of UC's books and records will be kept and maintained in accordance with the Advisers Act. UC's records will clearly reflect the investment advice given to its clients. As required by Section 204 of the Advisers Act, UC undertakes that all books and records maintained by it will be made available to the SEC for inspection.

Unibanco undertakes that it will cause UC to make and keep accurate and current books and records relating to the Subject Investment Advisory Services in accordance with the Advisers Act and Brazilian law. Furthermore, Unibanco will make and keep true, accurate and current books and records relating to any related securities transactions in accordance with Brazilian law, which will include books and records of the type described in subparagraphs 1, 2, 3, 6, 7, 8, 9, 10 and 13 of Rule 204-2(a) under the Advisers Act. All of the above-described records will be maintained and preserved by UC or Unibanco in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record. Unibanco and employees and persons under the control of Unibanco (collectively, "Employees") will produce promptly, or cause UC to produce promptly, to the SEC upon receipt of a request for production, including without limitation an Administrative Subpoena, any and all books and records

12/ The Division interprets "related securities transaction" broadly.

relating to the Subject Investment Advisory Service or underlying securities transactions, at any place the SEC may designate in the United States or, at the SEC's option, in Brazil at the offices of Unibanco or UC.

3. Production of Personnel and Documents

All Unibanco employees involved in UC's United States advisory activities, including research analysts and other employees of Unibanco whose functions or duties relate to the determination of which recommendations UC may make to its United States clients, shall be deemed to be "associated persons" of UC. With the exception of clerical and ministerial personnel, Unibanco undertakes to produce for testimony pursuant to an Administrative Subpoena or a request for voluntary cooperation all Employees who are identified by the SEC, SEC staff, Unibanco, or UC as being involved in the Subject Investment Advisory Services or related securities transactions.

Except with respect to the identity of customers of Unibanco, Unibanco will authorize any Employee identified in an Administrative Subpoena or pursuant to a request for voluntary cooperation to testify about all Subject Investment Advisory Services and related securities transactions in which the Employee has experience or knowledge. If Unibanco agrees, any Employee identified in an Administrative Subpoena or appearing pursuant to a request for voluntary cooperation may testify about the identity of customers of Unibanco. Unibanco also agrees that it will produce, pursuant to an Administrative Subpoena or a request for voluntary cooperation, any documents, including without limitation books and records as set forth above, relating to the Subject Investment Advisory Services or related securities transactions.

Except with respect to the identities of customers of Unibanco, Unibanco represents and agrees that it will not in any way contest the validity of an Administrative Subpoena for testimony or documents, nor will it contest the appearance of its Employees for testimony, under any laws or regulations other than those of the United States. Unibanco undertakes to report to the staff of the SEC any change in Brazilian law that would prevent Unibanco from performing the undertakings in this letter and Unibanco understands that, with respect to any such change in Brazilian law, the staff of the SEC reserves the right to withdraw this letter if, after discussion, Unibanco and the staff are unable to agree upon a satisfactory modification of the terms of the letter.

Because these positions are based on the facts and representations in your letter, you should note that any different facts or representations may require a different conclusion. Further, this response expresses the Division's position on enforcement action only, and does not express any legal conclusions on the questions presented.



Thomas S. Harman
Associate Director and Chief Counsel